

MOSELY'S
HANDYBOOK
OF
ELEMENTARY LAW.
SECOND EDITION.
BY
BEDFORD

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A
PRACTICAL HANDYBOOK
OF
ELEMENTARY LAW:

Designed for the use of Articled Clerks:

WITH
A COURSE OF STUDY, AND HINTS ON READING, FOR
THE INTERMEDIATE AND FINAL EXAMINATIONS.

By **M. S. MOSELY**,
SOLICITOR; CLIFFORD'S-INN PRIZEMAN, M. T. 1867.

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BY
EDWARD HENSLOWE BEDFORD,
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"Falsè enim est querela, paucissimis hominibus vim percipiendi, quæ tradantur,
esse concessam, plerosque vero laborem ac tempora tarditate ingenii perdere."—
Quintilian.

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(DEDICATION OF THE FIRST EDITION.)

TO

JACOB WALEY, Esq., M.A.

ONE OF THE EDITORS OF "DAVIDSON'S CONVEYANCING,"
ETC., ETC.,

THE FOLLOWING PAGES

ARE RESPECTFULLY DEDICATED,

AS A SLIGHT TRIBUTE OF ADMIRATION

OF HIS HIGH ABILITIES AS A SCHOLAR AND A LAWYER,

BY HIS OBLIGED AND OBEDIENT SERVANT

THE AUTHOR.

PREFACE

TO THE SECOND EDITION.



IN the present Edition I have re-written some portions, where the changes effected by the Judicature Acts have necessitated important alterations, or where my own views have not coincided with those of the late Author; and I have added the names of such works as my experience of nearly fourteen years as a coach has taught me are most useful to students. With the above exceptions, I have, as far as possible, retained the original matter, and where not wholly inconsistent with the new Acts and Rules, I have allowed much mention of the old practice to remain, for the simple reason that it explains and shows the necessity for the alteration effected by the new. Moreover, it must be borne in mind that the examiners ask, in some instances, the candidate to point out the most striking differences, particularly as regards Ejectment, and I trust that I may not by this means have rendered my work confusing to my

readers. I would only add, that it is my intention, if called upon to edit a future Edition, to eliminate all old matter, as the working under the Judicature Acts will then probably be sufficiently advanced to admit of such a course being adopted.

E. H. BEDFORD.

9, KING'S BENCH WALK, TEMPLE,
August, 1878.

PREFACE

TO THE FIRST EDITION.



A FEW words of apology and explanation are due to the reader as to one or two points in which this little book will be found to depart from the approved standard of works written for the Profession. In particular the familiarity of the language and method of illustration therein employed may appear, at the first glance, unsuited to a book intended for students of law. But I would ask those who therefore take exception to this "handybook" whether all other sciences than Law are not in these days of "popularized science" taught, in their rudiments at least, in some such homely form as that here adopted? and whether the experience of modern times has not shown that this method—be the subject chosen logic, natural history, or what not—works at all events as well in practice as the more stilted, if more dignified, mode of instruction formerly pursued? It is because I cannot recognize in the subject-matter of Law any peculiarity which should exempt it from this general rule, that I have attempted to approach the elements of legal knowledge in somewhat the same spirit as that in which the elements of other sciences are now approached by those who write on them for the behoof of beginners.

A second point, apparently amenable to censure, is the disproportionate length of the earlier chapters of this book

when compared with those that follow. My explanation of this is, that I have assumed the reader to come to their perusal entirely innocent of all legal knowledge whatever, and have therefore attempted to explain some of the points presenting themselves at the first outset with what may appear, to more advanced students, somewhat wearisome prolixity. If this is a fault, I at least share it with far abler and better teachers in the different paths of learning.

Finally, it may be objected that there is in the following pages too much allusion to the *personnel* of the author. To this charge of intentional egotism I must plead not guilty: inasmuch as everything written down in this book has been derived directly from personal experience, some such effect was perhaps inevitable. At any rate—and although these pages may be as full of I's as a peacock's tail—the offence, if it exists, is one easily to be resented by the reader, who may accept the matter, whilst utterly condemning the manner in which it is sought to be conveyed to him.

These faults notwithstanding, I am not without hope that the book may be found useful to the class for whom I design it, and of whom I was so recently one.

M. S. MOSELY.

BRISTOL,
Feb. 1st, 1868.

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INTRODUCTORY REMARKS.

I SHALL assume in the first chapter of this book that—with the assistance of “Bedford’s Preliminary Digest,” “The Guide to Latin Grammar,” and “Bedford’s Preliminary Papers,” containing the questions and answers of the Examinations*—you have successfully passed your preliminary examination. It does not come within my present purpose to give you any instruction concerning this, the first of the three “siftings” which every articled clerk has now to undergo before he can aspire to the practice of the profession. Moreover, the preliminary examination being an inquiry into the *educational* not the *professional*, fitness of the candidate; and this purporting to be simply a handy-book for “embryo lawyers,” it is obvious that any observations upon so wide and general a subject as that of scholastic education would be out of place here.

But yet I would say a few words (on this, our first introduction to each other) to you who are as yet unlearned in case or statute law, fresh come to the profession from school, and with five years, or more, of legal labour before you. And first, as regards yourself, personally. The calling upon which you are now entering does not demand fools for its acolytes: Chancery Lane can hardly be regarded as a refuge for the

* These works are published by Messrs. Stevens & Sons, 119, Chancery Lane, E. C. Can be obtained of Messrs. Butterworth, Fleet Street.

imbecile; and there are, I should conceive, few fathers who would think of putting the "dull one" of the family into a profession which calls for such continuous mental exertion as that of a solicitor. I may, therefore, safely assume that your intellect is of average power, and your perceptive faculties sufficiently acute. If it should happen that you are internally conscious of any deficiency of "*nous*," I should advise you at once (and notwithstanding you may have triumphantly passed the somewhat inconclusive test of a preliminary examination) to abandon your purpose of entering the ranks of the profession. There are "fresh woods and pastures new" enough in all conscience; and by relinquishing an occupation to which you are personally unsuited, you will save your friends many hundreds of pounds, and yourself much defeat and humiliation—not to mention eight or ten of the best years of your life.

But assuming, on the other hand, that you are convinced as to your own capacity and willingness for work of a somewhat dry and uninviting description to the beginner, it will be necessary to offer you some brief general suggestions (before entering upon any specific details) as to the plan of study you, as an articled clerk, should pursue. And, in the first place, I would impress upon you the absolute necessity for *thoroughness* in your work.* Law, of all studies, perhaps the most imperatively taxes the application of its students. Natural parts of the highest order, combined with even a large amount of desultory reading, will never make a man an ordinarily good lawyer. Great perseverance, and a fixed method, are primary essentials for him who would master the science of law. But these are not all that are requisite. Wit, fancy, imagi-

* Upon this subject the student cannot possibly do better than read the masterly address delivered by Mr. Thomas Carlyle at Edinburgh University in the year 1866.

nation—these, indeed, are scarcely wanted in the lower branch of the profession of law, which calls in its exercise for no impassioned oratory, no appeals to the feelings, no pathos, and no poetry. But for a certain amount of *originality*—or, as some would call it *character*,—there is a need: without any share of this you would become a mere stickler for forms and precedents *as* forms and precedents only; an exerciser of the *Art*, but not a knower of the *Science* of law,—which would be a bad thing for yourself, and a worse for your clients. But, then, this quality of originality is required only for the sake of *directing*, not of *ruling* you. For instance, it would be the reverse of laudable if you were to take up any student's first book (the present one not excepted), setting up a regular day-by-day course of reading, and then literally follow up that course without change or modification or regard of circumstances. It is here *originality* should direct your studies. *Exempli gratia*: suppose on a certain day your book-teacher leads you, in regular course, to the subject of the law as between landlord and tenant, and on that very day you have had to copy out for your principal* a somewhat unusual and complicated Deed of Partnership, containing clauses as to investment of capital, settlement of accounts, &c., which (with your slender knowledge of the law of partnership) you are at a loss to understand. Now is your time, with these clauses still fresh in your memory, to turn to, and master the elements of this particular subject. Reading never impresses itself so strongly on the mind as when the subject-matter itself has been recently before one in a practical form. The law of landlord and tenant (in such a case as this) will keep a day or two. At

* I hope you will not be foolish enough to object to copying drafts—to a moderate extent at all events—in your principal's office. You do not know how much knowledge is gained by this simple, mechanical process of copying.

the same time you must not allow yourself to be diverted from your course, unless with some real and substantial reason. You must depend upon your own discrimination to inform you when it is best to adhere to, and when to depart from, the settled *route*. Some little *originality* and independence of idea are necessary for this.

I would further urge upon you the necessity, throughout the entire period of your novitiate, of frequently-repeated self-examination. In the body of this book you will find a few hints as to keeping a professional note, or commonplace, book, which I hope may prove useful. This book should contain your impressions of the general substance of every chapter of every treatise that you may read, compiled from "rough notes" taken immediately after its first perusal. You should occasionally sit yourself down with this book before you, and write upon loose sheets of paper a more amplified exposition of the particular subject treated upon in these notes (the heads being suggested by the entries in your commonplace book, and the details being filled in from your own recollection of the text-book); then, referring again to the latter, correct and modify the paper you have written out in the manner suggested. This may seem an obvious and simple plan enough. I can only say that I should have saved myself, when an articled clerk, a considerable amount of labour had I followed it from the commencement of my reading.*

In addressing you as a learner in the following pages, I must, of necessity, labour under one great disadvantage, inasmuch as I am ignorant as to what particular branch of the profession you, individually, intend to apply yourself. There is, of course, a large distinction between the several courses of study necessary to make (for instance) a commercial and an ecclesiastical lawyer, respectively.

* I can indorse this most fully (Editor's note).

Whilst, to the former, an intimate acquaintance with the laws of shipping, of carriers, and of bankruptcy, in all their ramifications, is absolutely necessary, the latter will require to be somewhat deeply versed in matters of Church discipline, and to be familiar with tithe law, and with constitutional history (necessary to explain the present state of ecclesiastical jurisprudence)—subjects with which the commercial lawyer can have little to do in his everyday practice. I am, therefore, compelled, by the nature of my task, to direct your attention only to those great, broad divisions of the law, with which every professional man—be he a commercial, an ecclesiastical, municipal, equity, criminal, or real property lawyer—ought to be thoroughly acquainted. Besides the course hereafter laid down, you will, therefore, find it necessary, perhaps, to read up for yourself, unhelped by me, one or more special subjects; and I have, accordingly, been forced to content myself with supplying you here with an appendix, containing the titles of works upon such subjects as military, municipal, and ecclesiastical law (subjects which hardly call for much attention at the hands of the ordinary run of articulated clerks), arranged in a manner which I trust will spare you some little trouble in selection. But what I wish, particularly, to impress upon you now is, that whatever special branch of the profession you may hereafter adopt, there is one great legal subject with which you should in any event be well acquainted; I allude to real property law. You may, so far as I can tell, be destined, from the day you enter the profession, to practise some one branch of it to the exclusion of all others. It may be that you are articulated in the office of the registrar to some diocese, or in that of the solicitor to some municipal or trade corporation; and that you will, in due course of events, succeed to a practice of a similar nature. Well; even in this case you will find an intimate and thorough

knowledge of the law of real property of most essential service to you throughout your professional career. Real property law was the subject to which the attention of our lawyers was earliest directed at the time when law first resolved itself into a science in this country, and during the eight or nine centuries which have elapsed since its foundations were sunk, the structure has arrived at a grandeur of proportion and a studied perfection of detail far surpassing those of any other portion of our national jurisprudence. Our bankruptcy law is confessedly bad—constantly shifting, and in many ways unsatisfactory;* the ancient machinery of our common law courts was, a few years since, found to be so cumbersome and inefficient, that the whole system had to be rooted up by legislative enactment, whilst even now many consider that there is ample room for improvement.† But upon the merits of that branch of our law known as Conveyancing—the doctrines of which are expounded principally in the Chancery Division of the High Court—there has never been any difference of opinion amongst competent judges; and, saving only the great improvements engrafted upon the system nearly fifty years since, on the recommendation of the Real Property Law Commissioners (a subject which you will find handled in Mr. Joshua Williams' unapproachable book), the present state of this branch of the law differs but slightly from that which subsisted several generations since—stability, it must be remembered, being an admitted sign of strength. But it is not only because it is a most comprehensive and beautiful system, and the pride and boast of every English lawyer, that I would direct a large and especial share of your

* Notwithstanding the Act of 1869 and the Rules, experience teaches me reform is still greatly needed (Editor's note).

† The working of the Judicature Acts is too recent to give any decided opinion upon it at present (Editor's note).

attention to the doctrines of real property law, but because the study of these doctrines is a most orderly and logical training to the mind ; because, when you have once comprehended the intricate, subtle, but harmonious system of Conveyancing, you will find no legal difficulty too great for you—no point in case or statute law too involved or too minute to be apprehended ; because, in fine, a knowledge of this branch will open to you the doors of *all* legal knowledge. It is for these reasons that I would so strongly urge upon you, a young, and, therefore, impressionable beginner, the great advisability of making yourself, so far as may be, a master of its principles and practice.

You will, probably, come into your office with very vague notions as to the general scope and objects of English law. The subject is one not likely to have specially commended itself to your mind when at school ; and, although few owners of property, and few mercantile men, will be found in this country without some smattering (*sutor ne ultra crepidam*) of law, derived from personal experiences, still even this smattering is only picked up at a comparatively advanced period of life. This complete ignorance of yours is, however, far from being to your disadvantage. It is easier to write upon a perfectly blank and white surface than upon one on which are confusedly visible half-erased impressions. Before you settle down upon any course of professional reading it will be necessary for you to understand what the practice of the law really is ; to dissociate, in your own mind, the several functions of the conveyancer, the advocate, the pleader (technically so called), the attorney, and the solicitor.* Further, it

* By the Judicature Act the objectionable term attorney is abolished, as also the distinction between law and equity ; vide Judicature Act, 1873, ss. 86, 24 and 25, subsect. 11. See also Bedford's "Guide to the Judicature Acts," published by Messrs. Butterworth, Fleet Street (Editor's note).

will be necessary for you to regard and comprehend the original distinction between law and equity, as formerly administered in the different courts—a distinction which was one of the most striking peculiarities of our national jurisprudence. I am sorry that I am unable to recommend you any short and elementary book treating of these and other preliminary points: I am not aware that anything of the kind has been written. In the first chapter of this book a very brief explanation of these mysteries is attempted; but I cannot flatter myself that I have altogether succeeded in thus conveying a subject of so technical and yet so elementary a character. You cannot, however, too soon familiarise yourself with the subdivision of the law into the three great branches of equity, common law, and real property law,—the latter of which enters into and partakes of both the former.

One other thing I wish to call your attention to—the importance of being satisfied with a slow and almost imperceptible progress in your early studies. Do not be disconcerted if, after a month or six weeks' hard reading of the first chapters of Mr. Williams' treatise on Real Property Law, you are unable to define with any accuracy the distinction between a springing use and a contingent remainder, or if your notions of the difference between a tenant for life and a tenant in tail are somewhat confused: you will not have been the first student by a great many who has been thus temporarily discomfited. Pursue the system of self-examination without regarding the fact that your own ignorance is thereby revealed to yourself. You will infallibly find that repeated perusal and repeated annotation will fix the refractory doctrines thoroughly in your mind; and, still better, that each successive victory over an apparently incomprehensible theory will render the conquest of the next both easier and quicker.

With these few prefatory observations, I propose, in

the following chapters, to enter with you upon your state of pupilage; to set foot, side by side with you, upon the threshold of that great edifice of legal knowledge which you will have to penetrate, and, from time to time, to warn you, from my own past experience, of some of the pitfalls which beset the way of every articulated clerk. It will be my duty to offer some little practical advice as to what, when, and how you should read and in what manner you should acquaint yourself with the practical details of the office. The first step, in your case, *does* count immensely. Upon the start you now make, upon the views you now entertain, depends, in a great measure, your future professional success. Having embraced a vocation which demands certain acquirements in those who follow it, it should be your care to acquaint yourself what these *desiderata* are, and how you are to attain them. Inasmuch as there is, and can be, no royal road to learning, you will have to work for yourself: all that I can hope to do, is to save you some unnecessary labour and mortification during the process, by pointing out, with (as it were) an index finger, the path which is most calculated to lead you direct to your object. That path may, at first, seem dusty and uninviting; few flowers bloom at the road side,—there are none of the chirrupings and flutterings overhead, few of the sweet sounds and sights of which poets write, and which may (for aught I know to the contrary) be found in other paths. But as you progress on your way, and leave the milestones recording your ignorance gradually behind you, you will find the prospect not without a brightness and a charm of its own. To those who (each according to his ability) “drink deep” at the fount of legal knowledge there must be a certain pleasure in the practice of the law, quite apart from that derived from heavy bills of costs; and the annals of the profession abound with instances of men who have been happy in its exercise, and have even

entertained the same passion for its study as Roger Ascham tells us his royal pupil did for the Platonic philosophy. This capacity for making of the profession an object of attachment as well as a means of livelihood, is a happy and, I hope, not a rare one. May it be yours !

CHAPTER I.

THE FIRST YEAR.

PART I.*

Introduction to the Office—What may be learned by copying a Draft
—Explanation of technical Terms—The Profession and its Sub-
divisions—Conveyancing; Equity; Common Law; Bankruptcy
—Office Work and Office Routine.

YOUR Articles having been duly executed, registered, and stamped according to law (to all which your principal will see), you will find yourself one morning in the office in which the next four years of your work-a-day life are to be passed. The office of a practising solicitor is, generally speaking, far from Sybaritic in its appointments; and what will principally engage your attention, in the first instance, will be the bundles of red-tape-tied papers lying about on your principal's table, and the grim-looking volumes—some of them not innocent of dust—on the shelves of his book-case. With certain of these books you may hereafter be called upon to make acquaintance; but I should advise you to refrain from dipping into their contents prematurely on your own motion, as many of them treat of obsolete and abolished law, whilst others, of more recent date indeed, are yet quite unsuitable for your perusal at this very early stage of your professional career.

* Each of the following five chapters will be found divided into two parts. The former will treat briefly of office work and actual practice; the latter of reading.

I wish here to say a word or two (and I shall not again allude to the subject) as to the quantity and quality of the assistance which you are likely to get at the hands of your master. He has, probably, obtained a considerable premium with you, and your friends and yourself (not quite unnaturally, perhaps) may expect that in return for this he will carefully instruct you in the details of the profession. With your recollections of Dr. Birch, LL.D., still undimmed, it may be that you anticipate periodical examinations and a general daily supervision of your studies from the gentleman to whom you are articulated. This anticipation will not be fulfilled in the result; and, indeed, had your unsophisticated notions of the matter been correct ones, there would have been no need or place for this book at all. If, however, you only consider the subject attentively, you will, in the end, perceive that there is little room either for surprise or annoyance at the comparative neglect which your professional education will receive at the hands of your master. The truth is, that his time will be occupied, as you will find hereafter, in pursuits more immediately profitable to himself. This state of things, however undesirable, is quite inevitable, and irremediable. The only class of men capable of doing justice to articulated clerks is that one which never gets any articulated clerks at all—I mean very young solicitors, themselves still new and warm from their own final examinations. Parents, however, generally object (and very properly, as I think) to putting their sons in offices where they are likely to see but little business; and the consequence is, that youths are invariably articulated to men in the full swing of successful practice—men who, the inclination admitted, have really no time for attending to their clerks' instruction. It is because I know this to be largely the case that I venture to think this little book likely to be of some service to you in supplying, as far as

may be, the place of your principal. I need hardly say, however, that were these pages twenty-fold their number, and a hundred-fold their merit, they could not, in the nature of things, supersede the personal instruction of a living, actual mentor; and you will be very foolish and very culpable if you do not fully avail yourself of whatever occasional help your principal accords to you. Sometimes a few words of explanation from him, spoken in answer to your inquiries, will cast light upon some point of legal difficulty which it would have taken Sugden or Williams themselves half-a-dozen pages, and as many hours, to make clear. Accept, therefore, frankly whatever crumbs of knowledge your principal may cast you; but do not call for impossibilities, nor expect a man immersed in his own practice, and with all the daily cares and worries of business upon him, to be, for four or five years, a willing and indefatigable "coach" to you in your legal studies.

I well remember the first day I spent in an office, and the first task which fell to my lot there. It was not in itself a very trying one, and as it may very likely be your own earliest experience, as it was mine, I may as well begin with it here. It was simply the fair copying a draft. Now, you may, very possibly, in your own mind think copying work a little below your dignity as an articled clerk; and it must be admitted that some few solicitors (not many, I am glad to believe) are too much in the habit of using their articled clerks as mere copying-machines, oblivious of the fact that they are young gentlemen who, for a pecuniary consideration, are in their offices for the purpose of learning the profession they themselves practise. Still, I should recommend you, for your own sake—even if you happen to find yourself under a somewhat unconscionable task-master—to comply with his wishes to a moderate extent. At all events, the *first* year of your articles is not the time to kick against the pricks,

inasmuch as these "early days" could not possibly be employed in the office with more benefit to yourself than in copying drafts. I assure you that, easy as the process seems and is, and altogether below your (doubtless) great abilities, yet that a youngster with his wits about him may pick up a good deal of useful knowledge from copying and examining the engrossment of deeds. First, you will "take stock" of your draft,—examine its external appearance; will notice that it is written on one side of the paper only, in order to admit of amplifications and additions on the backs; that it is secured at the corner, by tape or pins, and that a wideish margin (reserved for addenda in the rough draft, and for observations and corrections in the fair copy) is ruled off on the left-hand corner of each sheet. But there are far more important things than these to be learned from the rough draft you are now about to copy in your best small-text hand. Regard it attentively, and follow it clause by clause with my analysis of it.* The draft commences with the words, "This Indenture," in large letters (this is technically called "the title"), and then immediately follows a blank space for the date, which will be filled up when the deed is signed, or "executed," and the names of the persons (we will call them John Stokes and Richard Styles) by whom it is to be executed—known as "the parties." After this, you will observe the word "Whereas," which commences a long-winded sort of sentence at present quite unintelligible to you; possibly there may be four or five of these "Whereases," the distinctive name of which clauses I would beg you to observe is "recital." Then, after all these "recitals" are exhausted, come the words, "Now

* I have assumed that the student's first experience is of a Conveyance in Fee. The observations I here make, or some of them, will, however, serve (*mutatis mutandis*) in the case of other instruments.

this Indenture witnesseth," also in capital letters; and following this clause—which will be found in every deed, and is called the "Testatum," or "Witnessing part"—you will find a statement that Richard Styles pays John Stokes so much money (termed in legal language "the consideration"), which Stokes acknowledges to have received, and that, thereupon, Stokes "Grants and conveys," (these words being an indispensable part of the deed, and known as the "operative words") to Styles, his *heirs and assigns* (particularly notice the words in Italics, and remember that they are called the "limitations"), "All that" house and garden—or whatever it may happen to be—which you, as a professional man, will for the future please to call "the parcels." The next thing you will observe is a long string of words, which may possibly strike you as somewhat superfluous, in which "houses and outhouses," "hereditaments and premises," "rights and titles," and all manner of things will claim your notice (these are the "general words"); and the latter part of the deed (after a mysterious phrase commencing with "To hold") is taken up by three or four more long sentences, each beginning with a large "And," and being, as far as you can make out, something in the nature of mutual promises, rather redundantly expressed, between Stokes and Styles, and you will not be much surprised to hear that the proper technical name for this sort of promise is "Covenant." The wind up of the whole affair is, that "In witness thereof" Stokes and Styles sign their names, and on the back is a receipt by Stokes for the money he is to receive from Styles.

Now, I am going to put this simple little deed—which you will hereafter know is a "Conveyance in Fee"—into a sort of skeleton form for you, in order that you may better understand its meaning.

DRAFT OF A CONVEYANCE IN FEE.

<i>Initial Form.</i>	<i>Text.</i>
1. Title.	" <i>This Indenture</i>
2. Date.	" made the day of 1868
3. Parties.	" Between John Stokes of the one part " and Richard Styles of the other " part
4. Recitals. (1)	" Whereas by Indentures of Lease and " Release dated the 10th and 11th days " of April 1800 and made between " Joseph Smith of the one part and " Timothy Stokes of the other part the " said Joseph Smith (for the considera- " tions in the now reciting Indenture " mentioned) granted released conveyed " and assured unto and to the use of " the said Timothy Stokes his heirs and " assigns All and singular the here- " ditaments and premises hereinafter " particularly described (2) " And whereas the said Timothy Stokes " died on or about the fifth day of " October 1851 a widower and intestate " leaving the said John Stokes (party " hereto) his eldest son and heir at " law (3) " And whereas the said John Stokes " hath lately contracted and agreed " with the said Richard Styles for the " absolute sale to him of the messuage " hereditaments and premises herein- " after mentioned in fee simple free " from all incumbrances at or for the " sum of 1000/.

5. Testatum. "Now this Indenture witnesseth that
6. Consideration. "In consideration of the premises and
 "of the said sum of 1000*l*. sterling
 "(the receipt of which and that the
 "same is for the absolute purchase in
 "fee of the messuage hereditaments
 "and premises hereinafter mentioned
 "the said John Stokes doth hereby
 "acknowledge) He the said John
7. Operative
 part. "Stokes doth hereby Grant and Convey
 "unto and to the use of the said
 "Richard Styles his heirs and assigns
8. Parcels. "All that messuage hereditament or
 "dwelling-house being No. 1 Queen
 "Street in the parish of St. Ingulphus
 "in the County of Gloucester Which
 "messuage hereditament or dwelling-
 "house is situate at the north-east
 "corner of Queen Street aforesaid
 "and is now in the occupation of
 "the said Richard Styles or his under-
 "tenant
9. General words. "Together with all houses out-houses
 "yards gardens ways paths passages
 "waters drains gouts pumps areas
 "lights liberties profits privileges ad-
 "vantages easements and appurten-
 "ances to the said messuage heredita-
 "ment and premises belonging or
 "appertaining
10. Habendum. "To have and to hold the same and
 "every part thereof unto and to the
 "use of the said Richard Styles his
 "heirs and assigns for ever

11. Covenants.
- (1) For title.
- (2) Against incumbrances, and for quiet enjoyment.
- (3) For further assurance.

“necessary or shall be deemed by the
 “said Richard Styles his heirs and
 “assigns advisable for further assuring
 “the hereditaments intended to be
 “hereby conveyed and will for that
 “purpose at the like request and costs
 “procure the concurrence of all such
 “persons (if any) as shall be necessary
 “for fully effectuating the intent of
 “these presents and for absolutely
 “assuring as aforesaid the heredita-
 “ments and premises hereby conveyed
 “or intended so to be

12. Conclusion.

“In witness whereof the parties to
 “these presents have hereunto set and
 “subscribed their hands and seals the
 “day and year first above written.”*

Now, I ask you, in the first place, to consider what it was intended to effectuate by this deed; and secondly, to observe the manner in which the various clauses and provisions contained in it meet the object in view.

The object of the deed we are now considering is to legally vest in Richard Styles the house in Queen Street, hitherto belonging to John Stokes, upon payment to Stokes of 1000*l.* therefor.

Until about five-and-thirty years ago it was necessary that every instrument used for authenticating the transfer or conveyance of land between parties should have been what was termed “indented,”—that is, cut in a wavy line at the top of the skin of parchment or sheet of paper on which it was written; and although in the year 1844 an Act was passed, making it unnecessary so to “indent,”

* This Form seems to have been adopted from some old precedents. Davidson's Concise Precedents will give rather simpler ones (Editor's note).

yet the name or title of "Indenture" is still retained in order to distinguish this sort of deed from another, termed "deeds poll" (of which the top was always *polled* smooth), which are of one part only, *i.e.*, executed only by one person, and not of two parts as in this instance. After the words "This Indenture" follow the names of the parties, and you will notice that Stokes comes first, and is called "of the one part," and Styles next, "of the other part." Now, the general rule is, that the person *from* whom the property goes, called "the vendor," is named *before* the person *to* whom the property goes, called "the purchaser;" in this case Stokes is the vendor; and the house in Queen Street goes from him to Styles, the purchaser; and on this account Stokes is named in the deed before Styles. If you will remember this general rule, that the person or persons (for there may be several, and of several parts, as 1st, 2nd, 3rd, &c.) who sell, or convey, are always named before the person or persons who take or purchase, it may save you some confusion when, by-and-bye, you come to investigate titles,* and read deeds for yourself. After the names of the parties follows the date, as a matter of course; and I may as well tell you here, that if the deed is not dated at all, or an impossible date (as the 31st of June) is put, the real date of the deed may be proved by evidence, if necessary. Hitherto all has been plain sailing; now you come to your first *crux*, the "Whereas." This *recital* tells you that by "Indentures of Lease and Release," dated a good many years since, Joseph Smith conveyed this property to Timothy Stokes. "Well," you may say, "but what has Timothy Stokes to do with it?" Wait a moment and you will see. What a Lease and Release were you will learn hereafter; it will be sufficient for you for the present to know that

* This subject will be found treated of in Chap. II. Part I.

they were two deeds, purporting to be dated on two successive days, but in reality always executed at the same time (which two deeds answered the same purpose as the *one* we are now considering does at the present day), and that since the year 1841 they have ceased to be necessary—only one being now requisite. Well, by these “Indentures of Lease and Release” it seems that Joseph Smith conveyed the property to Timothy Stokes, in 1800, and that is all this recital says. This is the beauty of recitals; you are compelled to go one step at a time, which is much the safest and surest way in all things, you will find. Who Joseph Smith was does not appear on the recital; only, as he *must* have been the owner of this house in 1800 (else he could not have sold it to Timothy Stokes) we are pretty safe in concluding him to have been the owner of the fee simple (that is, to all practical purposes *absolute* owner of the property) previously to Timothy Stokes becoming so. Well, we now see that, in 1800, *Timothy* Stokes was the owner of this house in Queen Street. Now let us go to the next recital, which you will see clears up the mystery. This recital tells us that Timothy Stokes died in 1851, intestate, and a widower, leaving *John* Stokes his eldest son and heir-at-law. We will dispose of each of these points successively. To die *intestate*, means to die without having made a will (or *testament*). Had old Timothy Stokes liked, he might have made a will, and left this property to whomever he pleased—for it is (as you will by-and-by learn) quite a vulgar error to suppose that *all* freehold property *must* go to the eldest son; but he did not chose to do so. You will observe that it is stated that Timothy died “a widower,” as well as intestate: the reason for stating this is, because, according to a custom, which afterwards became a law, the widow of a man was entitled to a third of whatever landed property he might die possessed of, provided he did not leave it to

anybody else. This third is called "*dower*;" and although the law on the subject was considerably changed forty-five years ago from what it had been, still, in the majority of cases, the widow of an *intestate* is still entitled to her *dower*, or third. It was necessary to state, in this deed, that Timothy Stokes died a widower, otherwise his widow would have been entitled to a third of the property. As it was, you see it went *all* to John, who, being the eldest son, had a right to the land, on his father's decease *intestate*, in exclusion of his brothers and sisters. So now we see how John Stokes comes to be in a position to agree with Richard Styles, in the third recital, to sell him No. 1 Queen Street for 1000*l*. This house is what is termed *freehold*—which will be explained to you further on—and is therefore of the class called *real* property; but had it been *leasehold* (that is, held on lease for any number of years from another party) it would have been *personal* property, and would have had to be divided equally between John Stokes and his brothers and sisters.* All this you will find treated of in detail in one of the first books that you will have to read—Mr. Joshua Williams' "*Real Property*." The next clause we have to consider is the *testatum*, which "witnesses" that for 1000*l*. Stokes "grants and conveys" (*what* does not yet appear) to Styles "*his heirs and assigns*." The word "grant," with or without the word "convey," is what is called the "*operative*" word, and *operates* to convey the property from Stokes to Styles. But, you will notice, it is not merely that "Stokes grants to Styles," but that Stokes grants "to Styles his heirs and assigns." Now these words "heirs and assigns" mark the property for what it is,—a fee simple; had the words been simply "John Stokes grants to Richard Styles," or even "to Richard Styles and

* The entire subject of "Copyholds" is advisedly left untouched for the present.

his assigns," the effect would have been that poor Styles, for his 1000*l.*, would only have got an "estate" (as it is called) for his life; so that if he had died next day, the property would have gone back (or "reverted") to Stokes, who would yet have kept the 1000*l.* But the introduction of the words "his heirs" prevents this. The law is, that in order that a man may take a *freehold* estate *by deed* (by will it is otherwise) it is necessary that his "heirs" should be named; and the words "children," "issue," or "offspring," or any other of that nature, would have no effect whatever. In order, therefore, that Richard Styles should take (what he has bought) the *freehold*, or *fee*, it is necessary that it should be conveyed (as it is here) to him "and his heirs,"—the words "and assigns," although quite superfluous, being always added. Now let us see *what* it is that Stokes "grants and conveys" to Styles "his heirs and assigns." What should it be, but the house in Queen Street? And in the "parcels" coming immediately after, we accordingly find that it really *is* "All that messuage or dwelling-house," &c., No. 1 Queen Street ("messuage" is another name for house); and then we find a string of words following (the "general words"), in which all sorts of things—in legal language "appurtenances"—are conveyed along with the house to Styles, some of which may very possibly not be in existence at all. This practice is universal, but quite useless (except for the purpose of lengthening the deed); the more so as, at law, the mere word "land" would, without mentioning anything about the house even, have been quite sufficient—apart from the question of identity—to have passed No. 1 Queen Street, with all its numerous "appurtenances," to Styles. However, there these "general words" are, and there they must remain, I suppose. Then comes a sentence—the "habendum"—"To hold the same to the said Richard Styles his heirs and assigns for ever"—the

object of which is, to point out with certainty the person to whom the estate is conveyed, and the interest he is to take in it, beyond doubt or misapprehension. We are now nearly at the end of our draft; all that remain are the three, or in reality four, sets of promises, or "covenants." The first is called "the covenant for title," by which Stokes engages that he really *has* the right of selling the house to Styles; the second is termed "the covenant against incumbrances," and is a sort of warranty by Stokes that he has not mortgaged or incumbered the property in any way, so that Styles will come into it *clear*; and the third goes by the name of "covenant for quiet enjoyment;" and the fourth, of "covenant for further assurance," which is merely to the effect that *if* another deed becomes necessary (in such a simple case as this it never would be) Stokes, or those who may hereafter stand in his shoes, or "represent" him, will execute it. The object of these covenants being inserted is to enable Styles to sue Stokes in a court of law if it afterwards turns out either that the property was not his to sell at all, or that he had mortgaged or incumbered it in any way. If there were no such covenants Styles would, of course, still have a remedy against Stokes; but it would then be a more difficult and troublesome matter, and Styles would probably have to go to the Chancery Division of the High Court of Justice for relief (what the Chancery Division of the High Court is I will presently tell you); and therefore these covenants are most beneficial to Styles as purchaser, and further secure him against any chance of having been imposed upon. You will notice that these covenants are entered into by Stokes, his heirs, executors, administrators, and assigns, with Styles. What executors and administrators are I shall have an opportunity of explaining to you in a future chapter: all I need now tell you is that, without the addition of these words, Styles

might have some trouble in suing on these covenants if it became necessary to do so after Stokes' death, and they are consequently always added.

We have now come to the end of our draft. What I would recommend you to do is to make a copy of it for yourself from the analysis, and then go over these observations, one by one, with your copy, repeating the process until you thoroughly understand what it all means. This may take you a week to do at all satisfactorily; but the week so spent will not be thrown away.

After you have completed your fair copy (which your principal will, probably, receive from you with mortifying indifference, telling you, without one word of admiration of your splendid handwriting, to "take it to one of the clerks outside"), you will, if you have nothing else on hand, do well to "prowl" about the office for a day or two, and pick up a general notion of what sort of work goes on in it. You will probably begin by asking questions of the clerks; but you will find (unless you are exceptionally lucky) that those of them who *could* tell you anything at all worth learning are remarkably taciturn, and stick to their own work, quite unimpressed with the importance of answering your inquiries. The junior clerks and errand-boy, indeed, will be ready enough to fraternise; but as these will have little professional information to impart beyond the arts of folding drafts and writing "engrossing hand," I should counsel you, whilst behaving to them with proper civility, not to spend too much of your time in their society. If the managing clerk (supposing there be one) is at all accessible, he is the most likely man to help you to what scraps of practical information you may require; but I expect you will presently find that the old adage, "blessed are the hands that help themselves," applies equally in a solicitor's office as elsewhere.

Your first discovery will be—if you are fortunate enough to find yourself in an office of anything like “general practice,” which is by far the best sort of office to *be* articulated in—that there are a good many phases, or sides, to the profession; that, like Proteus, it assumes various shapes, and is by no means confined to the drafting, copying, and engrossment of conveyances, in fee or otherwise—although, of course, that is a very important branch of its practice. Three years ago you would have noticed long strips of parchment—in form, polite invitations (apparently) from her Majesty to choice intimates of her leisure hours, but which, on due investigation, you would have found to be nothing pleasanter than writs. You would likewise have seen oblong folded papers—looking, from the fact of their being printed instead of written, not unlike the prospectuses of companies, and bearing on their outside, in Gothic or Roman characters, the mysterious words “Bill of Complaint,” together with other enigmatical figures and inscriptions; and should you inquire concerning these, you would have been told that “they are Chancery Bills,” and that they had “no connection whatever” with the writs aforesaid—which latter emanated from the Courts of Common Law, whilst the former were “creatures of equity.” But now by the Judicature Acts and Rules you must remember that all actions which have hitherto been commenced by writ in the Superior Courts of Common Law at Westminster, and all suits which have hitherto been commenced by Bill or Information in the High Court of Chancery, are instituted in the High Court of Justice by a proceeding to be called an action. And every action in the High Court is commenced by writ of summons, indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action, and which specifies the Division of the High Court to which it is intended that the action should be

assigned.* You may also, perhaps, observe some rather mean, part-printed, part-written papers, small and square, which you will learn are County Court "plaints" or "summonses;" and you may further come across portentous sheets, partly manuscript and partly lithographed, which, from their heading "The Bankruptcy Act, 1869," you will not be at a loss to understand are forms in use at the Court of Bankruptcy. Various other things you will see—"Awards," "Assignments" and "Codicils"—so numerous, so various, and all so apparently incomprehensible, that your first impulses on beholding them will be to instantly renounce the profession and all its vanities, and to start forthwith for the wilds of Australia. You will, however, get over this temporary fit of desperation; and if you only go along the path to which this finger-post of mine (which can only tell you *where* to go for the knowledge it cannot impart itself) directs you, you may possibly find your way pretty clear, and the difficulties not so insurmountable after all. Let us begin with the writs.

These documents, which are technically called "Writs of Summons," are, as I have already said, the first actual step in every action which is now commenced in any of the Divisions of the High Court of Justice. Before I begin to describe the nature and effect of a writ, I must, however, attempt a (necessarily) very brief and imperfect account of the Common Law Divisions of the High Court out of which they purport to issue. The Common Law Divisions of the High Court are three in number; viz., the Queen's Bench, the Common Pleas and the Exchequer of Pleas. Over each of these three courts (which were collectively known as "the Superior Courts of Law" at Westminster) preside six judges—a chief and five juniors—or *puisnés*. In the Queen's Bench and Common Pleas Divisions these chief judges are

* See Bedford's "Guide to the Judicature Acts" (Editor's note).

called "Lord Chief Justices," and the *puisné* judges were called "Justices;" in the Exchequer Division the senior judge is termed "Lord Chief Baron," and the four *puisnés* were termed "Barons."* The three chiefs take precedence in the order named above; but the *puisné* judges take rank altogether, according to their seniority on the bench. From this you will gather that these three Common Law Divisions were equal, or very nearly so, in importance; and this, indeed, is still so: with some slight exceptions (which will be explained to you further on) for the Queen's Bench, Common Pleas and Exchequer Divisions have equal power, and nearly equal "jurisdiction," as it is termed. The "jurisdiction" of a court of law was of a twofold nature: first, as to the subject-matter of the suits themselves; and secondly, as to the persons and places over which their powers extend. The three "Superior Courts" had, as the Common Law Divisions now have, a very wide jurisdiction—extending to England and Wales, and the town of Berwick-upon-Tweed, but not to Scotland or Ireland†—in *civil* matters—that is to say, in all matters of breach of contract, and wrong (generally speaking) *not* amounting to felony. Accordingly the two great branches of actions at common law were known as actions *ex contractu* (*id est*, arising from breach of contract) and actions *ex delicto* (that is, arising out of wrongs).‡ To give you an instance of each: a suit to compel the payment of a debt would have been an action *ex contractu*, because there was a contract or promise—expressly in words or writing, or else implied by the law—on the one

* Save the chiefs, who still retain their old rank and titles, every judge who is now appointed is styled in his appointment "Judge of Her Majesty's High Court of Justice." See Bedford's "Guide to the Judicature Acts" (Editor's note).

† See also 31 & 32 Vict. c. 54, as to a Register of English Judgments kept at Dublin and Edinburgh (Editor's note).

‡ Form of actions are not now so distinctly classified under the Judicature Acts (Editor's note).

side to furnish the goods, and on the other to pay for them—and the non-payment for the goods according to promise constitutes debt; a suit on account of an assault committed by A. on B. would have been an action *ex delicto*, or an action of *tort*, because it did not arise from any contract, express or implied, but was substantially a *tort* or *wrong*, committed by one party against another. You will observe, however, that both actions *ex contractu* and actions *ex delicto* might have been brought in either of the three superior courts; and that, in every case, the commencement of the action was the “writ of summons,” and even in the Chancery Division, as we have stated. We will now proceed to the consideration of one of the writs in an imaginary action in one of the Common Law Divisions issued in London—*Stubbs versus Furnival*.

The first portion of the writ of summons contains the title in full, and is as follows:—

1878. S. 136.

In the High Court of Justice.

Queen’s Bench Division.

Between John Stubbs Plaintiff.

and

Richard Furnival . . . Defendant.

The date of the year, letter, and number, comprises what used to be termed in Chancery the reference to the Record, namely—the date of the year, initial letter of the plaintiff, and the number of the Bill which had been issued under that particular letter, and was the method by which the cause book at the Record and Writ Clerk’s Office was kept for the purposes of distinguishing the chancery suits. This same practice is, as appears from the above portion of the writ, now adopted at Common Law.

The next sentence of the writ runs thus: “Victoria by the grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith to Richard

Furnival of Steep-street Bath in the County of Somerset butcher.”* This stately enumeration of his or her Majesty’s titles was formerly never omitted from any common law writ, and now not from any writ: it is by some supposed to take its origin from the proclamations of the heralds in the times of tilt and tournament, whilst others consider it the formal ancient commencement of a letter. This is the Queen’s “greeting” to Richard Furnival, who is the “defendant” in the action. I presume it is scarcely necessary to tell you that her Majesty has no personal acquaintance whatever with Mr. Furnival, that she has not sent any letter, writ, or greeting to that individual, and is even ignorant that any such missive has been delivered to him. The person who is really the mover in the issue of this writ is the proper officer of the court (here the Queen’s Bench), who, on being presented with a paper copy of the writ stamped with a five shilling stamp and a plain duplicate with the necessary indorsements and signed by the solicitor, or plaintiff if he issued it in person, “issues” the writ by stamping in the lefthand margin of the duplicate a mark or “seal,” and files the stamped copy in the cause book. When he has done this, the matter is formally before the court, and the plaintiff impliedly undertakes to carry on the action (supposing any further steps to be necessary) according to its rules and orders of procedure.

The next sentence is as follows: “We command you that within eight days after the service of this writ on you inclusive of the day of such service you do cause an appearance to be entered for you in the Queen’s Bench Division of our High Court of Justice in an action at the suit of John Stubbs.” John Stubbs is the name of the plaintiff, who is (in the case we are now supposing) bringing an action against his debtor, the defendant

* It is not absolutely necessary to insert the description (Editor’s note

Richard Furnival, for the price of pigs supplied to him. The meaning of "entering an appearance" you will be told presently. The writ goes on: "And take notice that in default of your so doing the plaintiff may proceed therein and judgment may be given in your absence." This means, that if the "appearance" is not entered by Richard Furnival (or his solicitor) within the eight days, Mr. Stubbs' solicitor may, what is termed, "sign judgment" in the book kept for that purpose in the office of the court, and may "issue execution,"—that is, issue another writ (called a "writ of fieri facias"—known familiarly as "fi. fa."), which empowers the sheriff of the county in which Mr. Furnival resides—the sheriff of Somerset—to "execute" an operation very unpleasant to Mr. Furnival if he is a man of a prudent and well-regulated mind; viz., take his goods (or sufficient of them to satisfy Stubbs' claim, and the costs); or under certain circumstances application may be made for a judge's order of committal of Mr. Furnival under 32 & 33 Vict. c. 62. We shall see more of this writ of fi. fa. and the commitment order, and of two other writs of execution, more uncommon of occurrence, called an "*elegit*," and a "*feri facias de bonis ecclesiasticis*" (I hope you do not, like Shakespeare, require a gift of "Latten Spoons" to make you understand the meaning of this last long-winded writ), when we come hereafter to consider at greater length the proceedings in an action after appearance.* In all probability, however, this "judgment in default of appearance," as it is called, will not take place: either Mr. Furnival (knowing, in his inmost soul, that Stubbs' claim is a just one) will pay the amount due within the four days mentioned on the "indorsement" of the writ; or else, supposing him to repudiate Mr. Stubbs' claim

* In Chap. III. Part I.

altogether, will "enter an appearance," submit to the jurisdiction of the court, and defend the action: this, as we have seen, he must do "within eight days after the service of the writ, inclusive of the day of service."

The "body," or front side of the writ concludes: "Witness The Right Honourable Hugh MacCalmont Baron Cairns Lord High Chancellor of Great Britain at Westminster the first day of April in the year of our Lord One thousand eight hundred and seventy-eight." This is called the "*teste*" of the writ; and by Order II., Rule 8, this "*teste*" must be dated on the day on which the writ was actually issued at the office of the court, which was, therefore, the 1st April, 1878. If the office of Lord Chancellor is vacant the writ is tested in the name of the Lord Chief Justice of England. The same remarks that I have made as to the name and title of her Majesty apply in the case of the Lord Chancellor, who knows nothing of the issuing of this writ, and will probably never even hear of it, unless the case, in some form or another, comes personally before him.

Then follows the memorandum to be subscribed on the writ:—

N.B.—This writ is to be served within (*twelve*) calendar months from the date thereof, or if renewed from the date of such renewal, including the day of such date, and not afterwards. The defendant (or *defendants*) may appear hereto by entering an appearance (or *appearances*), either personally or by solicitor, at the Appearance Office, Queen's Bench Division, Temple, London.

We will now turn to the back of the writ, and notice the "*indorsements*" (as they are called for an obvious reason) written upon it.

The first of these indorsements is as follows: "The plaintiff's claim is 83*l.* 4*s.* 9*d.*" Until a very recent enactment (the "County Courts Act, 1867") it was usual

for plaintiffs to issue writs for very small sums when they thought that the defendant would pay, and not bring the matter into Court. It was long since enacted that a plaintiff recovering less than 20*l.* by verdict of a jury, in an action of debt, should not be entitled to costs, unless the judge "certified" to give them to him; but this did not extend to the case of a "judgment by default." This omission has, however, been remedied by the Act of 1867; and the consequence is that no action can be commenced in the High Court for a debt of less than 20*l.*; if it be below that amount, the plaintiff's remedy is in the County Courts.*

Let us return, however, to *Stubbs versus Furnival*. Immediately *above* the intimation that proceedings will be stayed if Furnival pays Mr. Robinson 83*l.* 4*s.* 9*d.* and 2*l.* 15*s.*, within four days after service of the writ upon him, comes the following sentence, which is emphatically termed "*the indorsement.*"

"The following are the particulars:—

		<i>Dr.</i>	£	s.	d.
" 1877.					
Jan. 21st.	To 28 quarterold store pigs, at 23 <i>s.</i> each		32	4	0
"	To carriage from Wooton Bassett to Bath, as per agreement		1	8	0
April 9th.	To 36 store pigs (Limerick) at 21 <i>s.</i>		37	16	0
"	To carriage as agreed		1	16	0
June 3rd.	To prime Irish carcasses, 800 lb. (without offal), at 4 <i>s.</i> per 8 lb.				
	as agreed		20	0	0
"	Paid for carriage of same		0	10	9
			<hr/>		
			93	14	9
		<i>Cr.</i>			
" 1877.					
Dec. 22nd.	By cash of you		10	10	0
			<hr/>		
			£83	4	9

"And 2*l.* 15*s.* for costs. And if the amount claimed be

* This statute modifies the discretion given to the judge by Ord. LV. (Editor's note).

paid to the plaintiff or his solicitors, within four days from the service hereof, further proceedings will be stayed."

The indorsement, as you see, contains full particulars of the plaintiff's claim upon the defendant.* If the writ had been issued without any indorsement, the defendant might have compelled the plaintiff (by a "summons at Chambers," of which more in another place) to furnish these particulars at his own expense; and in that case Stubbs would have had to pay all the costs attending the summons, &c. in any event—even if he afterwards won the action itself. Again, supposing the particulars had not been so full, Stubbs could have been made, in like manner, to supply "further and better particulars." It is thus obvious that the correctness and fulness of these "particulars of demands" are matters of some importance.† You will observe that credit is given, in the last item, for 10*l.* 10*s.*, paid by Furnival to Stubbs in December. Had this not been included in these particulars, Furnival could have raised it hereafter in his Statement of Defence by what is termed a "set off;" but the consequence of this would probably be that Stubbs would have to pay the costs of that plea himself; and it is on this account mainly that he gives credit for the payment in his particulars.

The concluding indorsements are as follows:—

"This writ was issued by John Smith and Richard Brown, of 90, Gray's Inn, in the county of Middlesex, agents for William Robinson, of 5, High Street, Wooton Bassett, in

* Which may consequently render it only necessary to deliver a notice to the effect that his claim is that which appears by indorsement pursuant to Ord. XXI. Rule 4. See also Bedford's *Guide* (Editor's note).

† Particularly having regard to Ord. XIV. Rule 1, of the Judicature Acts, as to which see also Bedford's *Guide and Time Table* (Editor's note).

the county of Somerset, solicitor for the said plaintiff, who resides at No. 20, High Street, Wooton Bassett, in the said county."

Smith and Brown are what are termed the "London agents" of your principal, Mr. Robinson. The latter is, by the rules of the Court, not allowed to issue a writ *in London** himself, even if he should happen to be in London, but must send instructions for that purpose to his town agents. Then follows the address for service:—

"The address for service is 90, Gray's Inn aforesaid;" and lastly, the "memorandum of service."

We have now considered the form and substance of a "writ of summons;" the proceedings subsequent to its "issue" have next to be briefly stated.

The writ having been duly issued, it is "served" on the defendant. For this purpose the London agents send down the original writ to their country client and a copy for service. The clerk or "process server" of the latter then sallies forth, like some knight-errant of old, with the object, however, not of succouring beauty in distress, but of serving Furnival with a writ. He accordingly proceeds to the most likely place of encounter with Furnival—which would be his shop in Bath. If he is fortunate enough to meet Mr. Furnival, he then shows him the original writ, puts a copy in his hand, says "At the suit of John Stubbs," or words to that effect, and then retires to some convenient place, where he indites on the original writ the "memorandum of service," which it is necessary for him to do at latest within three days from the actual service. If, as is very likely the case, Mr. Furnival is keeping out of the way, the process-server makes an appointment with whoever may be on the premises, stating the purpose for which he is desirous of the pleasure of a

* There are, however, district registries out of which writs now issue, as to which see Bedford's *Guide* (Editor's note).

personal interview. After three of these appointments, if Mr. Furnival is still "found wanting," the process-server leaves a copy of the writ on the premises, and makes an "affidavit" (*i.e.* a written statement upon oath, signed by him, and "attested" by a commissioner to take oaths) of the facts; and this affidavit being transmitted to London, a Master at Chambers will make an "order," the effect of which is that Mr. Furnival is to "*consider* himself served;" and thereupon the proceedings go on as if personal service had been actually effected.* If Mr. Furnival is residing out of the kingdom when the writ is issued, the judge would make an order empowering the issue of the writ and service abroad. When Mr. Furnival is at last served, he (that is, supposing he intends to resist Stubbs' claim) goes to his lawyer, who—again through the town agent—causes an "appearance" to be entered on behalf of his client, stating that he requires statement of claim; Mr. Furnival thereupon is formally before the Court as defendant. The writ of summons having thus done its office, we will postpone, for the present, entering into a detailed account of subsequent proceedings, beyond saying that the town agents having had notice of Furnival's "appearance" at the office of the Queen's Bench Division, thereupon Mr. Robinson prepares the first "pleading" (by name a "statement of claim"), which merely sets out what we know already in more technical language.† The paragraphs in this "statement of claim" are numbered consecutively, and used to be called "counts;" and when (as in this case) the action is brought merely for the recovery of a debt due, they were termed "common money

* In *Capes v. Brewer*, the Master of the Rolls held that a copy of the writ ought also to be posted to the residence and place of business (Editor's note).

† In the case put, a notice, as mentioned in note to page 34, would be sufficient, as the writ is fully indorsed (Editor's note).

counts," in order to distinguish them from those more elaborate special counts which were "pleaded" in other kinds of actions. These counts are now, however, abolished, and the claim must simply contain a statement of facts, and be as brief as possible. If it exceed ten folios it must be printed. In the margin of the old pleading were the words "Somerset to wit," which were called "the venue," and signified that the case would be tried in Somersetshire. A like notice at the foot of the claim is now necessary, as the case is not to be tried in Middlesex.* Furnival, not to be beat, now puts in, through his solicitor, another "pleading," which is called a "statement of defence," and which must be put in within eight days of the statement of claim, in which he sets out the defence which he considers he has to Stubbs' claims. A very probable one, in this case, would be that the pigs supplied by the plaintiff, when killed, were found to be unfit for human food; and, supposing this to be subsequently established at the trial, Furnival would get a verdict, inasmuch as the law always *implies* a promise or "warranty," from one person supplying goods to another, that those goods shall be reasonably fit for the purpose for which they are furnished. This, however, is only one of a variety of defences which Furnival might "plead;" and it is even possible that he might not "plead" any fact at all, but urge a mere point of law, which is called a "demurrer," and is brought to a hearing in quite a different way from a plea. Supposing Furnival, however, loses heart at this stage of the proceedings, and neither puts in a statement of defence nor "demurs" at all, Stubbs may then "sign judgment and issue execution in default of a statement of defence," in like manner as we have before seen he could have done in "default of appearance."

Upon the back of Furnival's "plea" used to be indorsed

* The form of the notice at the foot of the claim is as follows:—

"The plaintiff proposes that this action should be tried in the county of Somerset" (Editor's note).

a notice to Stubbs calling upon him to reply within four days, which he did (through his solicitor, of course) by filing a "replication," in which he, very possibly, denied Furnival's plea altogether—saying, to pursue our instance, that the pigs *were* fit for human food. If he thus directly denied Furnival's plea, he was said to "take issue" on it, and thereupon "issue" was said to be "joined," and the "pleadings" were at an end. Instead of doing this, however, he might have "replied" that the pigs became so unfit in consequence of Furnival's improper treatment of them between the time of his receiving them at Bath and killing them; and if he so "replied," Furnival would have a "rejoinder," in which *he* would probably "join issue." These pleadings might have gone on, after "rejoinder," to "surrejoinder," "rebutter," and "surrebutter" (the names of the different pleadings), *usque ad nauseam*; but, however long they might have taken about it, "issue" *must* ultimately have been "joined" (that is, whenever one party simply and *unqualifiedly* denied the other party's last pleading), and this part of the proceedings was then at an end. Now, under the Judicature Act, the proceedings simply consist of statement of claim, statement of defence and reply; and no other pleading, save a joinder of issue, can be pleaded without leave of a Court or Judge.* It is proper to remark here that these pleadings are not, as the writ of summons and the "appearance" were, issued out of the Court, or filed in it; as a general rule, they are merely delivered out of Court between the solicitors of the two parties; and when the "issue" is arrived at, the notice of trial is delivered to the other side, and no "record" is now made out, but simply two copies of the pleadings (printed when necessary) in their order and date, with a copy of the notice of trial indorsed, are taken by the plaintiff's solicitor to the Associate's Office, when the cause is entered for trial, and one of these is put before the judge who tries the action when the

* Bedford's Guide.

cause is "called on" for hearing—probably months after the "pleadings" have been pleaded. The proceedings necessary to bring the case on for trial, after the pleadings are thus exhausted, are,—the giving notice of trial, which must be done at least ten days before the case can possibly come on (at assizes, ten days before the opening or "commission" day, when the judges "open the commission" for the particular town they are then in); setting the cause down, which is ordinarily done the evening of "commission day" in country causes (in London the practice is different); delivering the previously prepared "briefs" to the counsel who are to appear; and, if necessary, "bespeaking" a "special" jury. Of all these matters I purpose telling you more when we come to consider an action at law in detail; and I will now conclude this branch of the present chapter by summarising in a tabular form, for your convenience, the matters at which we have already glanced.

SKELETON OUTLINE OF ORDINARY PROCEEDINGS IN AN ACTION.

1. Writ of Summons issued.
2. Writ of Summons served on the defendant.
3. Defendant "appears" within eight days of service.
4. Plaintiff delivers his statement of claim within six weeks of "appearance."
5. Defendant delivers his statement of defence within eight days of "statement of claim."
6. Plaintiff "replies" within three weeks of statement of defence (he may either "join issue" here, or proceedings may go on by leave of Court or Judge).
7. Plaintiff *or* defendant (as the case may be) "joins issue," within four days of last pleading.
8. Plaintiff gives "notice of trial," at least ten days before day of trial.

9. Plaintiff "enters for trial" with the proper officer at the assizes, and delivers the two copies (printed where necessary) of the pleadings to him.
10. Both parties deliver their "briefs" to counsel.
11. The cause is heard before a jury; they give their verdict; and what is termed the associates' certificate is obtained.
12. Judgment is entered, costs are taxed, and execution is "issued" (see *ante*).

It must be recollected that the above is a description of one kind of action only. In many others, the proceedings differ, more especially in the "pleadings." If the action is for a *tort* there can, of course, be no "particulars of demand" as in the case of *Stubbs v. Furnival*, and, consequently, the "statement of claim" (which then supplies the place of the "particulars") is much longer and more explicit. In one sort of action, called "Ejectment," which is an action for the recovery of land, there used to be no pleadings at all, issue being joined upon the appearance being entered; in another kind of action, known as "Replevin," and brought for a wrongful distress or "execution" against the sheriff (see the remarks upon the writ of "*fi. fa.*"), the pleadings were altogether different in their character, but now, under the Rules of the Judicature Acts, the practice in both cases is assimilated with that in other actions, save a replevin bond must still be entered into; and again, another class of actions, brought on what are termed "bills of exchange," vary from these as far as the writ of summons is concerned. I only mention these things to prevent any possibility of your imagining that you have learned more than the faintest outline from what you have now gathered of the proceedings in an action. When you are studying the subject of common law *in extenso*, which, according to my

plan, will not be until the third year of your articles, you may be better prepared to consider the various ramifications of the subject, with the efficient help of the book (Smith's *Action at Law*) to which you will direct your attention during your hours of study. I will only here add my recommendation that you thoroughly familiarise yourself with the little given above, before proceeding further. What is here set down is merely (as befits this early stage of your progress) a faint *indication* of the ordinary course of an action in the Courts of Common Law; but, on that very account, it is necessary that you lose no time in acquainting yourself, as well as may be, with its principal features as above sketched out.

I have mentioned that, besides writs, you will very probably notice, lying about the office, on your principal's desk, stacked away in pigeon-holes and elsewhere, various other documents bearing strange names, amongst which, but merely as examples, I enumerated "Assignments" and "Codicils." And this leads me to the second great division of the law, called Conveyancing; a branch of the science of jurisprudence that calls for as great assiduity in its study and carefulness in its practice as any art or science known to the civilised world. Conveyancing—although in its strict technical sense seeming to apply only to the transfer of real or quasi-real property (an example of which, in its simplest form, we have already noticed in the conveyance in fee from Stokes to Styles)—is now in continual demand amongst all classes of the community, inasmuch as the objects which can be obtained through its aid are both numerous and important. From the preparation of an elaborate settlement, involving the welfare and management of large properties, down to the humble and everyday bill of sale and assignment of a policy of insurance,

the aid of Conveyancing in its extended modern sense is in constant requisition, no less by the trader than by the proprietor of landed estates. Indeed, it may be said, without exaggeration, that—taking the entire general community, and not any one section of it—the assistance of the conveyancer is required far more often than that of the common-law, equity, or even bankruptcy lawyer. If a daughter is to be married, or a son apprenticed or otherwise provided for; does a man desire to enter into a professional, mercantile, or a more tender description of partnership; does he wish to lend money for a term, or to borrow it; to endow a charity, or to exact ten shillings in the pound from an insolvent debtor;—in all these cases, and in a hundred others, all equally various and equally important, he must continually have recourse to his conveyancer. Having regard, therefore, to the vast extent and great moment of the science, you should from the first bestow a large amount of your attention upon it; and not the less so because (as has been before remarked) it is a sort of key to the lock of the law generally. When once a man has a good *substratum* of Real Property Law, and of that more mixed science which, for want of a better term, we, in these days of life policies, copyrights, trade marks, funds, debentures, and other important personal property, continue to call Conveyancing, he can, with moderate industry, scarcely be at a loss when called upon to master any other branch of the profession: whereas the converse by no means holds good, and the sharp common lawyer and the expert bankruptcy solicitor may fail to grasp the doctrines of Real Property Law if presented to their minds at other than an early period of their professional lives. There are many valid reasons why you should desire to become “a good conveyancer;” and when I further mention that its practice is both more lucrative and more pleasant to a studious man than that of any other branch

of the profession,—more so even than Equity, which takes the next place,—you will, I think, agree with me as to the desirability of, in this the first year of your articles, acquiring at least some slight general knowledge of the extensive and symmetrical doctrines of the Real Property Law of this country. Aided by a careful and judicious perusal of that most classical, most accurate, and most interesting of law treatises, Mr. Joshua Williams' *Law of Real Property*, I doubt not but that you may, whilst your mind is yet fresh and retentive, obtain an insight into Real Property Law which will prove of infinite value to you throughout your professional life.

I will begin this short series of practical hints on the subject of Conveyancing, then, by drawing your attention to the fact that it is (itself only a division, though a principal one, of the law) subdivided into several distinct branches. Following out my plan of tabular statements, I here present you with a general view of these subdivisions.*

1. *Subdivision.*

2. *To what Matters it extends.*

1. Conveyances
(otherwise Sales
and Purchases).

Conveyances in fee, in tail, and for lives. Contracts for sale and purchase. Appointments under powers. Releases. Surrenders. Assignments of personal property and choses in action.

2. Leases.

Demises for years. Subdemises. Assignments of leases. Contracts for letting and hiring. Attornments. Licences.

* For a fuller explanation of this subject, see Chap. II. Part I.

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|---------------------------------|---|
| 1. <i>Subdivision.</i> | 2. <i>To what Matters it extends.</i> |
| 3. Settlements and Trust Deeds. | Marriage settlements. Post-nuptial settlements. Partnership deeds. Trust deeds and declarations of trust. Partition deeds. Assignments and compositions under the Bankruptcy Laws. Assignments of choses in action upon trusts. Separation deeds. |
| 4. Wills. | Wills. Codicils. Letters of administration. |
| 5. Securities. | Mortgages of real and personal property. Bonds. Bills of sale. Transfers. |
| 6. Miscellaneous. | Releases. Indemnities. Guarantees. Awards and arbitrations. Statutory conveyances. Charter parties, &c. &c. |

Of the first of these six classes of documents, you have already seen one specimen—the conveyance in fee from Stokes to Styles. Besides conveyances in fee, there are also, however, conveyances in tail and for lives, and demises for years. A conveyance in tail is where the land is conveyed—not to the purchaser and *his heirs*, as in the case where the conveyance is in fee, but to the purchaser and the *heirs of his body*. The difference in these two conveyances may be explained in this way. Supposing A. conveys land to B. “and his heirs,” and B. dies intestate and without a child, the land will go (subject to his widow’s right to dower) to B.’s father, if he has one, if not, to his eldest brother, and, should he happen to have no brother, to his nearest relation, whomever he may be. This is the “descent” of B.’s estate “in fee,” supposing

him to die intestate; but, as we have seen, he may during his life re-sell it if he pleases, or let it for a term of years, or, again, he may dispose of it by will. In fact, for all practical purposes, it is *his own*. But now, imagine that C. conveys land to D. and the *heirs of his body*.: Supposing D. to have a child, well and good—that child takes the property; but supposing he dies without a child (and by a child I mean, of course, a *legitimate* child, because an illegitimate child is emphatically “the son of nobody,” in the eyes of the law, in regard to the *descent* of property real or personal), whether he dies intestate, or leaves a will purporting to leave the land to E. (which “devise,” as it is called, to E. would be quite ineffectual), the land will what is termed *revert* to C. again, and will not go to D.’s father or brother or any of his relations. Still further, D., who is what is called a “tenant in tail,” cannot absolutely sell the property, as B. could *his*: if he disposes of it at all, it can only be to a very limited extent, unless he enrolls the deed of conveyance in the Court of Chancery, which, for various reasons, is often impracticable. Thus you will see that B.’s estate in fee is a much *greater estate* than D.’s estate in tail. But there is a third description of estate, called an estate for life, which is smaller still. Supposing F. conveys property merely “to G.,” without naming his “heirs” or anybody else; or “to G. and his executors;” or “to G. for his life;” in all of these cases G. will only have the property for just as long as he lives; and, if he had disposed of it during his life, the purchaser from him would be obliged to give it up to the person entitled to it after G.’s death (called “the *remainderman*”) as soon as G. is dead. It very seldom happens nowadays that an estate is given to a man for life, without anything further being expressed in the deed as to the ultimate disposition of the property—without any “limitations over,” as lawyers say. You will generally find that if land is given to a man for

life, there is a provision made that after his death it is to go to his eldest son, or if no son to his daughters, and, failing them, to somebody else. Let us see how it would work in practice.

Example: Land conveyed "to A. for the term of his natural life, and after the determination of that estate to the eldest son lawfully begotten of the body of A. and the heirs of his body, and in case there should be no son living at the decease of A. then equally to and amongst the daughter or daughters of the said A. and the heirs of their bodies, and in case there should be no such daughter so living at the decease of the said A. then to B. and his heirs."*

Let us see how this would operate under different circumstances of fact.

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|--|--|
| 1. A. dies, leaving two sons and a daughter. | The eldest son will have the property "in tail." |
| 2. He dies, leaving a son only. | The son takes "in tail." |
| 3. He dies, leaving a daughter only. | The daughter takes "in tail." |
| 4. He dies, leaving two daughters. | They take it equally (they are then called "coparceners"). |
| 5. He dies, leaving no child, and B. is alive. | B. takes in fee simple. |
| 6. A. dies childless, and B. is also dead intestate. | B.'s heir takes in fee simple (B.'s eldest son would be his heir). |

* The author is aware of the eccentric form of the above limitations; but had he expressed himself with strict technical accuracy, his meaning, to a one-year old student, might possibly not have been clear.

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| 7. A. dies childless, B. being also dead childless, but leaving the land <i>by will</i> to C. | C. takes in fee (C. is called "B.'s devisee"). |
| 8. A. being dead childless, and B. being also dead childless, and without a will, but leaving a widow. | One-third to the widow for life, the rest to B.'s nearest blood relation in fee. |
| 9. The same case, except that B. leaves no widow. | The nearest relation takes in fee. |
| 10. The same case, except that B. leaves no widow, and no relation of any kind. | The property "escheats" to the Crown. |
| 11. B. leaves a widow, but no blood relation. | One-third goes to the widow for life, the rest to the Crown. |

You will observe that whilst B.'s widow gets her third (or dower) out of the estate, after A.'s death intestate, I have not mentioned A.'s widow at all: the reason is this; there is *no dower out of a life estate*, but only out of an estate of *inheritance*—that is a fee simple, or a fee tail. An estate for life is not an estate of inheritance; it is only a *freehold*, not a fee. You will also observe that in the "limitations" given above, the land is conveyed to A. for life, and then *not* to the "heirs of his body," which, as I have told you before, gives an estate tail, but to his "eldest son," &c. The motive for this is, that by the operation of a rule of law, called "the rule in Shelley's case" (which you will presently read about in Williams' *Real Property*), the word "heirs" would have had the effect of giving A. the dominion over the property; and, as it was desired that he

should *only* have it *for life*, it is conveyed in this way so as to make sure of his children (if he has any) getting it after his death—the eldest son first; failing him and *his* children, the second son; the daughters, and so on.

You must also bear in mind that heirs male are always preferred, in the chain of descent, to heirs female of the same degree: a son to a daughter, a brother to a sister, &c.; and that females of the same degree take *all together* equally, daughters or sisters, as the case may be, their proper legal title being “coparceners.”

The above example of the “limitations” in a deed is only a mere sketch, intended to give you some general notion of the subject before attacking Mr. Joshua Williams’ book.

It is important that you should bear in mind that it is the *limitations* in a deed which mark out what is called the *quality* of the estate; in other words, that determine whether it is to be in fee, in tail, or for life; or if it is to be merely *personal* property. Remember also that estates in fee simple, in tail, or for life are all called *freeholds*, and are *real* property; whilst terms of years are only *personal* property, and descend in quite a different manner. If the house you now live in were conveyed by the owner to you “and your heirs,” or to you “and the heirs of your body,” you would have in either case a “freehold of inheritance” (because it is in each case *inheritable* property); whilst if it was conveyed to you *for life*, it would be a “life freehold”—a freehold *not* of inheritance. Supposing, however, the house was conveyed to you (or, more strictly speaking, “demised” to you) for any term of years,—one, seven, a hundred, or a thousand,—you would have *no freehold* in it at all; it would be only *personal* property,—what the law calls “a chattel real,”—and would, on your dying intestate, go to just the same people as your furniture, your pictures,

or your horses would go to;—your *personal* representatives, in short, not your *real* representative. What the difference is between these two classes, you will learn when you come to read the first chapter of Williams' *Real Property*.

The limitations, then, I have said, mark out the quality of the estate: perhaps this may help you to understand what is meant by this:—

LIMITATION.	QUALITY OF ESTATE.
(1.) "To A. and his heirs."	(1.) Fee-simple.
(2.) "To A. and the heirs of his body."	(2.) Estate tail to A.
(3.) "To A., and after his decease to the eldest son of his body begotten."	(3.) An estate for life to A., with the fee simple to his eldest son afterwards.
(4.) "To A. his executors and administrators."	(4.) This vests the <i>absolute</i> property in the matter conveyed — <i>personal</i> property this—in A.

The above are only a few out of innumerable examples which might be furnished; but they may be sufficient to elucidate my meaning.

You will find—this vast difference in the *limitations* excepted—that nearly all deeds of whatever kind—conveyances, mortgages, leases, &c. follow, in their general outline, much the same form. They all (with the exception of deeds poll) commence in the same way,—namely, by the title "This Indenture," followed by the date and the names of the parties in the order which I have before explained. The recitals, where there are any, follow immediately after the parties, then the witnessing part, the operative words, the parcels and general words, the *habendum*, and the covenants, just as in the conveyance

from Stokes to Styles, the difference being only in the *matter* and not in the *manner* of the deed. To this general rule there are, it is true, some few exceptions, of which an "Assignment of Leaseholds" and a partnership deed are, perhaps, the most important; and in the case of mortgages and other securities, there are additional clauses necessitated by the fact of the deed being meant as a *security* only, and not as an absolute sale or transfer of the property; but to these exceptions I do not just now propose directing your attention; and you may therefore take it that, *as a general rule*, this uniformity is observable in most regularly drawn deeds. There is, however, *one* very large exception to this in the class of instruments called wills, which are the expressions of a living man's desires with regard to the disposition of his property, published and taking effect after his death. Wills, indeed, stand apart by themselves in the list of legal documents; they are mostly prepared in quite a different way from deeds *inter vivos* (that is, instruments made between *living parties*) and are often drawn up by non-professional persons; and, what is more, they are construed (or interpreted) in quite another manner by the Courts, the maxim on this head being, that "a will is to be construed according to the intention of the testator." This same "intention" is oftentimes a very difficult thing to find out, and, consequently, the Court of Equity (which is the recognised tribunal for the *interpretation* of wills, in the same way as the Court of Probate is for their preliminary *proof*) is continually engaged in trying to make out the intentions of illiterate, contradictory, or crochetty testators.

To return, however, to our present subject, which is the *general* form of deeds. These are, as I have said, mostly cast in the same mould; but, inasmuch as the objects sought to be effectuated by them are so infinitely diverse, it follows that the *matter* stated in these regularly-

patterned forms is as various as are the interests and objects of men themselves. Nothing, for example, can be more uniform than the form in which all *recitals* are cast, whilst nothing can be more diverse than their subject-matter. All recitals, of whatever description the instrument may be, occupy the first or preparatory part of a deed, and they are all statements of facts, commencing with the word "Whereas." But, as you must see, it makes a great difference in the substance of a recital whether one sort of fact or another is to be recited; whether the matter to be recorded is that A. and B. have agreed for the purchase of a house, or that A.'s daughter is going to marry B.'s son. Indeed, by following up the recitals of a deed carefully and in their order, you can always (unless the draft has been most carelessly prepared) ascertain the facts in their order of occurrence. Let me give you two cases in instance of this:

Case No. 1. Thomas Hughes (who was the "devisee"—that is, the party to whom the property was left by will—of John Groves) is selling a piece of ground to Robert Jones.

Case No. 2. James Carey (heir-at-law of his late father, Richard Carey) is settling a cottage and garden upon his daughter Rose through the intervention of her trustees, Messrs. Brown and Robinson, previously to her marriage with Mr. Preston.

In the former of these two cases the facts required to be proved are (1) John Groves' right to the property; (2) His will leaving it to Thomas Hughes; (3) John Groves' death; and (4) Thomas Hughes' agreement to sell the

property. In the second, the requisite facts—the links in the chain—are (1) The right of Richard Carey in the property; (2) His death; (3) The manner in which James Carey became possessed of it; and (4) What he intends to do with it by the deed in question. Now, see how the recitals follow out this arrangement step by step:

CASE I. *Conveyance by Thomas Hughes to Robert Jones.*

(1.) “Whereas by Indentures of Lease and Release the latter dated 1st January 1800 and made between Arthur Mullins and John Groves for the considerations therein mentioned the said Arthur Mullins granted and conveyed unto the said John Groves and his heirs the lands hereditaments and premises hereinafter particularly described (by the description of all that, &c.) To hold unto and to the use of the said John Groves his heirs and assigns for ever.”

[There you see Groves gets the fee-simple.]

CASE II. *Conveyance upon trusts (or settlement) by J. Carey to Messrs. Brown and Robinson.*

(1.) “Whereas by Indentures of Lease and Release dated 2d and 3d April 1812 and made between John Doe and Richard Roe of the first part Timothy Leadbitter and Eliza Jane his wife of the second part and Richard Carey of the third part for the considerations therein mentioned the said John Doe and Richard Doe granted released and conveyed and the said Timothy Leadbitter and Eliza Jane his wife granted and confirmed unto the said Richard Carey and his heirs all that the said land tenements and hereditaments [description] to hold unto and to the use of the said Richard Carey his heirs and assigns.

[Doe and Roe in this case were trustees of Mrs. Lead-

*Case I. Conveyance.**Case II. Conveyance upon Trusts.*

bitter's marriage settlement; and Mr. and Mrs. Leadbitter, the beneficiaries (or, as they are termed, *cestui que trustents*) joined in the conveyance for the purpose of conveying the *equitable* as well as the *legal* estate.]*

(2.) "And whereas by his last will and testament dated 10th March 1839 the said John Groves devised the said hereditaments and premises (by the description hereinafter contained) unto the said Thomas Hughes (party hereto) his heirs and assigns for ever."

(3.) "And whereas the said John Groves died on the 1st May 1841 and was buried at the parish church of Wooton under Edge Somersetshire."

[By these two steps you see Hughes gets the property.]

(4.) "And whereas the said Thomas Hughes has

(2.) "And whereas the said Richard Carey died on the 7th day of June 1853 a widower and intestate leaving the said James Carey his eldest son him surviving."

[This is James Carey's title.]

(3.) "And whereas a marriage has been agreed upon and is intended shortly to be solemnized between the said Rose Carey and the said John Preston and the said James Carey is desirous of conveying the said hereditaments and premises to the said Alfred Robinson and Philip Brown upon to

* These terms will be explained a few pages farther on.

Case I. Conveyance.

agreed with the said Robert Jones for the absolute sale to him of the said hereditaments and premises for an estate of fee-simple free from all incumbrances for the price or sum of 800*l*."

[This is the agreement which the after-part of the deed carries out.]

Case II. Conveyance upon Trusts.

and for the trusts intents and purposes hereinafter expressed."

[Miss Carey and Mr. Preston have been made parties to the deed, for the sake of fixing the latter with a full knowledge of the transaction, so that there can be no question as to any imposition upon him as to the future husband of the lady.]

I should advise you as a matter of practice, to construct for yourself different sets of circumstances, and draw recitals to meet them. You will find, in a week or two, much less difficulty in expressing facts in precise and accurate language, such as that in which recitals are framed by conveyances.

There is little variety in the *Testatum* part of deeds, because here a fixed form is followed. After the statement of "consideration," the parcels, &c. come the "limitations," concerning which I have already said sufficient for my present purpose. The covenants, provisoes, &c. which conclude the deed are, however, almost as varying in their nature as the recitals. In the common instance of a conveyance in fee, you have seen that the covenants are "for title," "against incumbrances," "quiet enjoyment," and "further assurance;" and, indeed, these are the most useful covenants; but, even in conveyances, the circumstances of the case often require additional covenants; whilst, in the instance of leases and assignments of leases, they are altogether different—providing for the payment of

rent, repairing, insuring, and kindred objects. You must also bear in mind that securities (such as mortgages of real and personal property, &c.) differ greatly from conveyances in the covenants and provisoes which follow the "tenendum" or "to hold" clause.

In the second of my two "cases"—Carey to Brown and Robinson—you will perceive I have used the words "legal and equitable estate," "beneficiaries or *cestui qui trus-tents*," &c.; and you are doubtless desirous of knowing what these expressions mean. For the purpose of explaining these, I must now enter upon a consideration of the third great division of the law—that is, Equity. The origin of the Courts of Equity you will find explained very admirably in one of the first books on that subject which I shall put in your hands, Haynes' *Outlines of Equity*; but at present it is only needful to say that they first arose, some four or five centuries since, in consequence of certain very material deficiencies existing in the then Courts of Common Law. The distinction—which was apparent from the first between these two tribunals,—the Courts of Law and the Court of Chancery,—although latterly assimilated, still exists in both their principles though not now in their procedure; and perhaps the best service I can just now render you, is to strongly counsel that you keep the principles of common law and equity quite distinct in your mind. It is not expedient that I should here enter at all fully into the details of Chancery practice. I shall only just now give you a *very* brief outline of what they were and are.

Formerly, proceedings in the Court of Chancery ordinarily commenced with a bill of complaint, served by the plaintiff on the defendant. When the latter had "appeared," a second document, called "interrogatories," was served on him: these "interrogatories" were, in form, questions asked by the plaintiff of the defendant in respect of the

different allegations in the bill of complaint. These interrogatories the defendant had to answer within a certain time; and then after evidence, written (that is, by affidavit) and oral, had been adduced, the matter ultimately came before the Chancery Division of the High Court of Justice. Now, however, the Chancery proceedings are assimilated as nearly as may be, save in the practice of the Chief Clerk's Chambers and other minor details; and, except in the cases mentioned in the 34th section of the Judicature Act, 1873, the plaintiff may proceed either in the Chancery or Common Law Divisions of the High Court at his option. Over this Division preside, as chief, the Lord High Chancellor, who is the highest legal functionary in the kingdom; and he was assisted by the Master of the Rolls, the Lords Justices and Justices of Appeal, and the Vice-Chancellors, and by subordinate officers. The latter of these sit in what are called "Chambers," as do the higher judges also; and you must very carefully remember that the business, both of Courts of Equity and of Courts of Law, is transacted in each case before two different kinds of tribunal; the one called "the Court," in which the judges sit publicly, with or without a jury, and the other called "Chambers," in which the judges and their subordinates sit *privately*, and without the aid of jurymen. In each instance, also, the "Courts" and "Chambers" serve distinct purposes; in the former, the causes themselves are publicly heard; in the latter, applications, *incidental* to the main cause, are made, from time to time, during the proceedings as occasion may arise. As an example of the different functions of "Courts" and "Chambers," supposing A. sued B. in the Chancery Division of the High Court for redress, the case would of course come on before one or more of the judges in open court; but, supposing it were necessary before finally disposing of the case, to ascertain how A. and B. stood to each other in

regard to money-matters, in this instance the cause would be what is called "referred to Chambers," to ascertain what is the state of accounts between A. and B. Again, at law, supposing C. to sue D. for damages for an assault, the case will be tried, witnesses heard and verdict given "in Court;" but should it become necessary for D. to obtain an extension of the time allowed for pleading, he will have to apply for it "in Chambers."

But it is quite time to explain the meaning of these terms used in the Court of Chancery—"legal estate," "equitable estate," "*cestui qui trustent*," &c. One of the principal subjects over which equity exercises jurisdiction is that of "trusts." A trust is a confidence reposed in a person to do, or to refrain from doing, a certain thing. Thus, if my father were to give you five shillings for you to buy a concert-ticket for me, that would be "a trust," and you would be said to "hold" the five shillings, until you have bought the ticket, and then the ticket itself "in trust" for me. In other words, you will be the "trustee" of the ticket, and I the "*cestui qui trust*," or beneficiary, for whose benefit you so hold it. But inasmuch as *you* have bought, and have the possession of the ticket, although it was with money intended for my benefit you bought it, still, you are for the time in its *legal and lawful possession*, and you are said to have "the legal estate" in it. On the other hand I, for whose benefit the ticket was really bought, have an *equity*, or equitable right to demand it of you, and therefore I am said to have "the equitable estate." Now, substitute a piece of land for a concert-voucher; the principle is the same. "A. conveys a house and land" (which is the same as *handing over money*) "unto and to the use of B. and his heirs, upon trust to let it, and pay the rents obtained by letting to C." In this case it is quite clear that B. has the *legal estate* (that is, the possession of the property recognized in the

Courts of *Law*), because it has been directly conveyed to him in fee simple; but then, as long as C. lives, C. has a right to insist upon two things: (1) that B. shall let the property, and (2) that he shall hand over the rent obtained by letting to him (C.) the beneficiary or *cestui que trust*; and C., by applying to the Chancery Division of the High Court, can compel B. so to do. But in the Common Law Divisions, on the other hand, B. alone is recognized as the owner. Suppose, therefore, this case: that B. has let the property to D., who won't pay his rent: now if it is desired to *eject* (that is, legally turn out) D. from the premises, it is B., and *not* C., who must bring the action against D. But again, suppose that after B. has ejected D., he keeps the property wrongfully in his own possession; or supposing he has received the rent from D., or has recovered damages against D., in lieu of rent, and refuses or neglects to hand over the money to C.; the latter can issue a writ of summons against his trustee (B.) in the Chancery Division, and the Court will compel B. in the one case to let the property, and in the other to hand the money over to C. But in the Common Law Division he could not accomplish this; because though, under the Judicature Acts, Courts of Law are bound to take notice of equitable doctrines, still, by the 34th section of the Act of 1873, the Chancery Division has exclusive jurisdiction in the execution of all trusts. You now, I hope, understand what a "trust" is, and why it is that the Court of Chancery (*i.e.* Equity) deals with trusts.

Besides "trusts," the Chancery Division exercises a large and powerful jurisdiction over many other matters.* "Partnership" is one of these; and if one partner has any complaint against the other, and desires to have a balance

* See 24th section of the Judicature Act, 1873, and Bedford's *Guide* (Editor's note).

of accounts with him and to dissolve the partnership, he must appeal to equity for those purposes; because a Court of Law looked upon two or more partners as *one person* (so far as their business matters went); and as it was a maxim of law that "a man cannot bring an action against himself," it was evident that one partner could not, as a general rule, sue another at law. But, as you have seen, he had his remedy in equity, which regarded partners for what they really were—separate and distinct individuals, in their business as well as out of it; and therefore, if one of them had cause of complaint against another in business matters, equity would give him relief.* It was only, remember, in business matters that the law regarded partners as one single person; if A., for instance, *assaulted* his partner B., there could be no earthly reason why B. should not have brought an action against A. in a Court of Law. And, as between the *public* and the firm (though *not* as between the *partners themselves*), even equity regarded them as one person; thus, if A. and B. were partners in trade, and A. accepted a bill of exchange in favour of C., and misapplied the money which he received from C. for it, still the transaction was held binding upon B., in equity as well as at law, so far as C. was concerned.

The above may serve to convey to you some faint notion (for I can as yet give no more) of what equity is, and in what respects it differs from law, strictly so termed. There are yet two other great divisions of the law at which I can barely glance—they are (1) criminal law, and (2) bankruptcy.† Of the former of these I will only say, that it

* It must be remembered that the Chancery Division has still exclusive jurisdiction in the dissolution of partnerships (Editor's note).

† We would refer the student to Bedford's *Guide to Bankruptcy*, where the subject is fully treated on, published by Stevens and Sons (Editor's note).

is the code of law which governs the arrest, examination, trial and punishment of persons accused of crimes or offences. As I do not intend doing more as to this branch of the law than merely directing your attention to the best works to read to gain a knowledge of it (which I will duly attempt hereafter),* I shall give you no examples of the various crimes which our Statute-book provides against, nor describe their punishment. Bankruptcy law is a system which provides for the case of debtors unable to meet their engagements, and is a most important branch of the law to all connected with commercial pursuits. It has a separate court of its own, called the Court of Bankruptcy, in Basinghall-street, which again has branch courts for different districts of the country; and over these courts judges, called "commissioners," preside. When a man finds that his creditors are pressing him, and that it is impossible for him either to pay, or to enter into any private arrangement with them, he "presents his petition for liquidation" to the Court of Bankruptcy, which, after various examinations of him and his accounts, appoints one of the creditors, chosen by themselves (called "the trustee"), to "get in the assets"—that is, call in all the money due to the bankrupt, and turn his stock, furniture, &c. into cash; and, the "assets" being so realised, the trustee, after deducting the expenses of the bankruptcy, distributes "a dividend" rateably amongst all the creditors, and thereupon the bankrupt is "discharged" from all his liabilities, and free to commence the world afresh. If the creditors choose, they can take the matter into their own hands, and one or more of them can (under certain conditions) file a "petition" against the bankrupt, and thereupon proceedings similar to those above detailed take place, and a dividend is declared. The Court of Bankruptcy has the same powers of examining witnesses

* See Chap. VI. and Appendix.

on oath, &c. as the courts of law; and the trustee has various incidental powers, such as ordering the bankrupt's "real" property to be sold, and himself (if he has behaved fraudulently) imprisoned, or otherwise punished, according to circumstances.

Having now glanced over the different subdivisions of the law, and offered you some insight into the nature of the various sorts of work with which you will in future be occupied, I shall not longer delay you in this opening chapter than by advising you to do your utmost, during your first year, to familiarise yourself with office-work and official routine. Let nothing that passes escape your attention: do not obtrude your inquiries at unsuitable hours, but make notes from time to time of the matters which the books you are reading either do not notice at all, or do not satisfactorily explain, and seek their solution as opportunity offers.

A very excellent plan is that of reading all the office letters, after your principal has perused them, and more especially those from the town agents. The latter, properly studied, are a mine of knowledge in themselves, and will afford you, whilst still in the country, an opportunity of, to a great extent, familiarising yourself with the details of London practice. I should be trespassing far too much on my limits—already somewhat overstepped—if I attempted to even glance at the matters you will find discussed and communicated in the letters from your principal's town agents: I can only, in a word, advise you never to miss reading them in the morning; and I should further counsel the perusal of your principal's letters in reply to his agents, as well. Side by side with this attention to the office correspondence, is that which you should bestow upon those important documents, bills of costs. A properly drawn bill of costs is a perfect history of the transactions to which it relates, set out in due

chronological order: its usefulness as a study can hardly be overrated.

A word as to your division of your time. As a general rule, the business of a solicitor's office commences a little before ten o'clock in the morning, and concludes (except at assize time, or when there is a heavy run of work) about five, or half-past, in the afternoon. These hours are, if properly occupied, quite long enough, not alone for the health of your body, but for that of your mind also. I should advise you, on leaving the office, always to take a good half-hour's walk, if the weather is at all fine, before going home to dinner. If the domestic arrangements at home any way permit of it, you had far better dine at six or half-past six o'clock in the evening, than in the middle of the day. Apart from the fact of a one o'clock meal taking you away from your office at the very best time for work—when you are well warmed into it, and are not, as yet, in the least fatigued—I have found (after trying both plans) that it is next to impossible to do anything satisfactorily for at least an hour, or an hour and a half, after the meal of the day: work done immediately after dinner will be not only, as a rule, badly done, but will act injuriously upon your physical constitution, if regularly pursued. I should, therefore, advise that you recreate yourself after dinner with an amusing book, a game of chess, or a little music, as may commend itself to your idiosyncrasy. After these relaxations, aided by a cup of tea, you will find yourself, about eight o'clock, quite ready for the two hours' reading which I recommend to you from the beginning. Your book should, of course, accompany you to the office, but must be discarded whenever practical work presents itself. This two hours' reading per night, regularly persisted in, will be quite sufficient to make you, in the course of five years, a very well-grounded, if not a deeply-learned, book-lawyer.

PART II.

Course of reading for the first year: Lord St. Leonard's *Handy-book*, Stephen's *Blackstone*, Williams' *Real Property*—Practical hints on reading—System of self-examination.

WE all know how difficult is the commencement of all learning. The child of seven, upon whose infant mind the teacher strives to impress the fact of twice two being four, has far more difficulty in apprehending that truth than he will afterwards experience, when (well grounded in the elements of arithmetic and algebra) he encounters conic sections and the differential calculus, and has to learn the theories upon which they are based. Archimedes, demanding a "place to stand on," prior to that little operation of turning the world with his lever, asked for a very great deal more than at first sight would appear. In like manner you, in attempting to master the first principles of the extensive and abstruse science of real property law, will find your greatest difficulties all lie at the beginning. Williams, the first volume of Stephen's *Commentaries*, and Sugden and Hayes once mastered, the pages of Fearne himself (most subtle of legal writers) will require scarcely as much labour for their comprehension as the veriest elements of the law relating to "incorporeal hereditaments" demanded of you at the commencement of your studies.

And the help which I can here attempt to afford you in your present need, is—*must* be—of the smallest. There is no royal road to learning. You must dig and delve for yourself with infinite pains, before you can bring the

precious metal, knowledge, to the surface. All I can hope to do is to point out, as an old miner, what tools will best fit your purpose, in what order the different *strata* underlie each other, and where you will do wisely to commence your operations. And, after all, I must leave *you* to dig.

The first book to which I would direct your attention is a little, inexpensive manual, written by that grand old real property lawyer, Sugden, and known as Lord St. Leonards' *Handy-book*. Written in the form of lectures, and addressed more to laymen than to the profession, you will have, even at first, but little difficulty in comprehending it: and a *second* attentive perusal can hardly fail to leave you considerably wiser than before. So popular in its style, so easy to read and to understand, is this *Handy-book*, that it is quite unnecessary for me to analyse it here, or in any way to attempt any assistance to you whilst reading it. Indeed, the only danger is lest you may be tempted to read Lord St. Leonards' *Handy-book* in the same manner as you would a work of Thackeray's, or Charles Kingsley's, or any other classic of modern literature—that is, attentively and with a due appreciation of the beauty of the *style*, no doubt, but without any minute observation of the *matter*. Elegant and attractive as the *Handy-book* may be, you must remember that you are reading it not as a study of English composition, but as an epitome of facts. In reading this little book you must bear in mind that to read a law book with *any* effect, you must recollect accurately the substance of *everything between its two covers*. Above all, in reading, apply these rules: first, never skip an (apparently) unimportant or uninteresting paragraph, but read steadily through; secondly, do not allow yourself to pass by a sentence without fully understanding its meaning, or, if that is for the moment impracticable, making some note of it for after reflection and elucidation.

Another book which it is necessary for you to read (and

which, but a very few years since, was put into the hands of every articled clerk at the first moment of his entering the office) is Mr. Stephen's edition of the Commentaries of Sir William Blackstone. The text of Blackstone is, considered merely as a specimen of English prose-writing, one of the classics of our national literature; but it possesses still stronger claims upon the attention of the law student in consequence of the variety of legal subjects treated upon, and of the accuracy and clearness with which they are stated. The modifications and additions recently made by Mr. Serjeant Stephen have greatly increased its value as a modern book of practical utility. So far, at all events, as the first and second volumes of Stephen's *Blackstone* are concerned, you should lose not a day in acquainting yourself with their contents. Written somewhat more diffusely than Mr. Williams' book, *Blackstone* is easier reading than the latter to a beginner. The course I should recommend you to adopt in reading the two earlier volumes of Stephen's *Blackstone* is this: first peruse them carefully, making copious notes, analyses, and compilations, after the manner which I have already pointed out in my "Introductory Observations." This should be towards the commencement of your first year, after finishing Lord St. Leonards' *Handy-book*, but before commencing Williams on *Real Property*. After a *very* careful and minute first perusal of the latter book, you should then, towards the end of your first year, read the two (*Williams* and the second volume of *Blackstone*) side by side, and collate the one with the other. Both books treat of the same subject, but in so different a manner (each most excellent of its kind) that it is quite impossible that, between the two, you can escape learning something upon every branch of the law of real property. Although one window may have its glass of an antique bottle-green colour, whilst the other is of a pinkish hue, still you can see the exterior landscape through both, and

by that means also learn—which perhaps you might not otherwise do—that the view is neither rather greenish, as it appears through the one glass, nor somewhat pink, as it seems through the other. By looking with the eyes of different people at the same object, you will gain a better knowledge of its form than through the help of one pair of eyes alone, however keen and far-seeing these may be.

I now come to the great *pièce de résistance* of your first year's reading—Mr. Joshua Williams' *Principles of the Law of Real Property*, and I confess to feeling something like envy of you, about to experience a fresh "sensation" in those pages, so clear, so logical, so elegant, and withal so accurate. It is now some quarter of a century since Mr. Williams' book first challenged the admiration of the learned and unlearned of the profession; and it has, during that period, constantly progressed in favour, and now occupies, as a first text-book of real property law, a position somewhat similar to that which Adam Smith's *Wealth of Nations* used to, and Mr. J. Stuart Mill's work now does, take up with regard to the science of political economy. The book is more than any other constantly on the lips of articulated clerks, and at the same time one which is regarded by the seniors of the profession as a most reliable guide and indisputable authority in many matters of practical occurrence; it also holds—with Stephens' *Blackstone's Commentaries*—no small place in the estimation of a large "outsider" circle of readers, recruited from the educated class of laymen. Even if it were not, in addition, one of the three books selected by the examiners as the touchstone and test of knowledge in the intermediate examinations, Williams on *Real Property* would still demand your best attention as a work of rare technical and literary merits, in most unusual combination. I therefore neither require nor make any apology for devoting the latter part of this chapter to an enumeration of its contents.

Mr. Williams' book is divided into an introductory chapter, and five "parts," or subdivisions, each treating of a separate branch of real property law. In the introductory chapter the author gives a brief but comprehensive sketch of the early history of real property law in this country, of the origin and nature of the feudal system, and of the distinctions between real and personal, corporeal and incorporeal property. This introduction should (it is almost unnecessary to say) be thoroughly mastered before the first part of the treatise itself is even glanced at. Ample notes should be made on loose sheets of paper at the time of reading (and I would suggest that these notes should be made, preferably, in pencil, as less fatiguing and cumbersome in its manipulation than pen and ink), and these notes should afterwards be carefully arranged, corrected, and written out (in your own language as much as you can) in your Commonplace-book. As a sample of the method you should pursue with regard to the notes and Commonplace-book, I here append examples of each, founded on the commencement of Chap. I. of *An Estate for Life*, pp. 17—20, Eleventh edition.*

1. *Rough Notes.*

Land, no absolute ownership in; only an estate.

2. *Commonplace-book.*

(Williams' *R. P.*, chap. i.)

There is no such thing as an absolute ownership in land in this country. No man can have the absolute *ownership*; only an *estate in it*.

* It is most important that, whilst a young learner, you should consult and peruse the *latest* editions only of whatever text-books you take up. Our statute law is so constantly changing, that what is correct law one year oftentimes becomes altogether obsolete the next. When you are more experienced, this will be of less importance; but I would at present advise you to read no book on real property or common law of which the date is prior to 1875.

1. *Rough Notes.*

Estate for life. Smallest estate given after feudal system. Inalienable without landlord's consent. Grant "to A. B." Feudal donations. taken strictly. Reverter.

Now, "Every grant to be construed most strongly against grantor."

Grant "to A. B." at present

In wills is a question of construction.

See now 7 Will. IV. & 1 Vict. c. 26 (New Wills Act).

Estate *pur autre vie*; *cestui que vie*. The person first entering the "general occupant;" the heir "special occupant." Sta-

2. *Commonplace-book.*

Under the feudal system (brought into England by William I.), the smallest estate given to free-men was an estate for life. Therefore this is the *smallest estate of freehold*. A grant "to A. B." gave an estate for life only to him, because feudal donations were taken strictly, and the *heirs* of A. B. were not named in this grant. And even now, although the present maxim is that every grant shall be taken most strongly against the grantor," this rule still holds good *in deeds*, and a conveyance "to John Smith" would only give John Smith an estate for life, and not the fee.

This is, however, not the case with wills, where the testator's probable *intention* is observed. In such a case as this, too, the Act 1 Vict. c. 26 specially provides that John Smith is to take the fee-simple, or whatever estate the testator had to leave (see sect. 28).

If the owner of the life estate (call him A.) should sell it to another (call him B.), B. will be entitled to the land during A.'s life, and will be termed the "*cestui que vie*." If B. died in

1. *Rough Notes.*

tute of Frauds, &c.
&c.

Commonplace-book.

A.'s lifetime, formerly B.'s heir would have no right for the remainder of A.'s life estate; the first person that came by might have "squatted" on the vacant land, and nobody could have turned him out. He was called a "*general occupant*." Since the Statute of Frauds (29 Car. II. c. 3), however, B.'s heir would now take the land, subject to B.'s debts, for the remainder of A.'s life, as "*special occupant*," &c. &c.

The above will serve, perhaps, as well as a longer example. You will observe that, in the *Commonplace-book*, the *language* of Williams is not adhered to, although the *substance* is. You should, in fact, write *original* matter in your *Commonplace-book*, with the guidance of the rough notes written whilst you were actually reading your author. Whenever you come to a passage which you cannot, after due trial, understand, make a mark (thus—X) against it in pencil in the margin. When next you open this book and see the mark, reconsider the passage attentively. If with your added lights you still cannot understand its meaning, let the mark remain from day to day until you do, and then, and not till then, erase it.

All these suggestions may seem, and indeed are, small things; but remember what the Greek artist said:—"Excellence is made up of trifles, but is itself no trifle."

The sort of book I should recommend for your *Commonplace-book* is a moderately thick quarto or octavo volume bound in limp cloth; and you should have one for

each branch of your study,—one for Conveyancing, one for Equity, and so on. You should make a point of devoting one evening in every week (instead of reading) to looking over your rough notes, and transcribing them in your Commonplace-book.

Apart from the more rapid progress you will, through this practice, make in your legal studies, as well as the more orderly arrangement you will gain, this habit of “commonplacing” will, infallibly, greatly improve your literary style; and this in itself, to a member of a learned profession, ought to be no small matter.

Once in every month (I should suggest the last Saturday in the month,—but any *fixed* day will do) you should examine yourself. Write down a set of questions (say twenty) on the subjects you have been getting up during the past thirty days; then write the answers from memory, and afterwards correct them from your text-books. This practice will also serve a twofold purpose; first, it will fix what you have been reading more firmly in your mind; secondly it will improve your manner of answering questions, and cannot fail to be of service to you in your *real examination*. You must admit that these are two plump birds to have killed with one stone.

I will conclude this chapter by a short tabular analysis of Part I. of William’s *Real Property*; and I think you would find it well to make a similar description of analysis for yourself of the remaining portion of this book, and of every other book that you read during your articles.

ANALYSIS OF “WILLIAMS ON REAL PROPERTY.”

<i>Chap. &c.</i>	<i>Subject.</i>	<i>Short Summary of Contents.</i>
Part I.	Corporeal hereditaments.	Rules introduced by the feudal system; the <i>cestui qui vie</i> ;

<i>Chap. &c.</i>	<i>Subject.</i>	<i>Short Summary of Contents.</i>
Ch. I.	An estate for life.	special and general occupants. Tenancy for life an estate of <i>freehold</i> . Rights of tenant for life,—timber, equitable and legal waste, &c.; right to grant leases under 19 & 20 Vict. c. 120; his rights as to standing crops or emblements; assistance offered him in raising money for drainage under 8 & 9 Vict. c. 56, and 9 & 10 Vict. c. 101, &c. as to conveyances and sales of settled estates by the Court of Chancery.
Ch. II.	An estate tail.	Estates tail, general and special, male and female; estates tail are freeholds of inheritance; origin of estates tail in the feudal system; the effect of the Statute <i>De Donis</i> ; Taltarum's case; the system of fines and recoveries; superseded by 3 & 4 Will. IV. c. 74; the Protector and his functions.
Ch. III.	An Estate in fee-simple.	Origin and progress of the right and alienation of estates; persons incompetent to hold lands (aliens, criminals, &c.), or under disabilities (infants, lunatics, married women); the law of mortmain; as to corporations; the law against fraudulent conveyances under

<i>Chap. &c.</i>	<i>Subject.</i>	<i>Short Summary of Contents.</i>
		13 Eliz. c. 5; liability of fee-simple estates to owners' debts, &c.; the law of heritage.
Ch. iv.	Of the descent of an estate in fee-simple.	The law of descents under 3 & 4 Will. IV. c. 106; primogeniture, coparcenary, &c.; preference of male to female line; the nine cardinal rules of descent.
Ch. v.	Of the tenure of an estate in fee-simple.	What a tenure is, and what its incidents; of involuntary alienation by escheat, intestat, bastardy, attainder, &c.; of certain exceptional tenures—gavelkind, borough English &c.
Ch. vi.	Of joint tenants and tenants in common.	The four unities of joint tenancies; tenants in common; partition by joint tenants.
Ch. vii.	Of a feoffment.	Feoffment with livery of seisin, its law and origin; the Statute of Uses (27 Hen. VIII. c. 10), and its effects; dissolution of the monasteries; the statute 8 & 9 Vict. c. 106.
Ch. viii.	Of uses and trusts.	What an use was and is; trusts in the Chancery Division of the High Court; equitable and legal estates; the Trustee Acts.
Ch. ix.	Of a modern conveyance.	Leases and releases; the Statute of Uses; the Statute 8 & 9 Vict. c. 106; form of a modern conveyance.

<i>Chap. &c.</i>	<i>Subject.</i>	<i>Short Summary of Contents.</i>
Ch. x.	Of a will of lands	The Old and New Wills Acts the essentials to the execution of a will—its revocation, its construction; the functions of the Chancery and the Probate Divisions; executors, devisees, legatees, and creditors, their rights and liabilities.
Ch. xi.	Of the mutual rights of hus- band and wife.	Separate use; tenancy by the curtesy; dower.

CHAPTER II.

THE SECOND YEAR.

PART I.

Practical view of the ordinary routine of Conveyancing—The investigation of Titles—Purchases—Leases—Securities—Settlements—Wills.

HAVING in your first year attained, in the manner previously indicated, some general knowledge of the doctrines of real property law, it is now time for you to acquire an insight into the practice of conveyancing—the art by means of which the science of real property law is carried into effect.

Conveyancing may, at starting, be roughly sub-divided into two great divisions—the first, the preparation of deeds; the second, the practical management of matters preliminary, collateral, or incident to such preparation. It is obvious that if your client* A. is about to purchase property of B., a great deal more is necessary to complete the transaction than the mere drafting and engrossing of the conveyance itself. In the first place it will be your duty, on behalf of A., to investigate the “title” which B., the vendor, offers; when this investigation is concluded, and the title satisfactorily made out, it *then* is necessary to draw the instrument of transfer, and, when this draft is approved of by those who are entitled to have a voice in its preparation—that is to say, all the parties to the deed

* I here, for the sake of clearness, assume the reader to be acting as solicitor in the matter.

other than your client—you will finally have to “complete” the matter, and see that the deed you have prepared is executed and stamped according to law.

The practice of conveyancing may, therefore, be thus epitomised:—

- | | |
|--|--|
| (1) Matters preparatory to the deed. | The preliminary contract, investigation of title, and matters incident thereto. |
| (2) Preparation of the deed itself. | |
| (3) Matters subsequent to the preparation of the deed. | Search for incumbrances—execution of the deed, its stamping and registration (if necessary). |

The preliminary contract and investigation of the title will form the first branch of our inquiry.

Contracts for the purchase of land, whether freehold, leasehold or copyhold, are practically of two kinds; the first being private, or ordinary contracts; the second, contracts arising out of a sale by auction. It is essential to both these classes of contract that they should in every case be reduced to writing, and signed by the contracting party; otherwise, by the Statute of Frauds, they will be (except under special circumstances, not necessary to be detailed here) of no legal effect whatever. But, although it is necessary that each of these contracts should be in writing, signed, and stamped with a sixpenny agreement stamp, in order to give them due efficacy, still they differ one from the other sufficiently, in other respects, to make it necessary for me to draw your attention separately to each of them.

A “private contract” means an agreement made otherwise than at a public auction. If A. goes to B. and says,

“I will give you 500*l.* for your house in Maudlin Street, Bristol,” and thereupon one of them writes down these words, and A. and B. sign their names to it across a six-penny stamp; the transaction is then complete. B. still remains the legal owner of the house, it is true, but A. has a right to call for a legal transfer of it to himself, by a regular deed, and B. will be compelled so to carry out his contract in the Chancery Division, which (by a doctrine of its own, termed “conversion”) in fact looks upon A. as the real *equitable* owner of the property from the moment of this contract having been signed. But although such an agreement as this would be a perfectly valid one, still it is obviously a very disadvantageous arrangement for A., who binds himself down to buy the house, quite ignorant of what B.’s title to it may be. Of course, if B. has no title to it at all—if, in fact, the house is not his—the contract would not be insisted on at law or in equity, because no man can sell that which is not his to sell: but supposing there to be *difficulties* or *delays* in the matter, A. may be put to a great deal of expense and trouble by having entered into such a contract as the above—an “open contract” it is termed—instead of insisting upon a regular agreement, in which everything incidental to the purchase shall be clearly stipulated for. It consequently follows that nearly every regular contract or agreement of this description contains a variety of stipulations, binding down the parties to given particulars. As a sample of these agreements, I here append a very simple one, made between A. and B., for the sale of the house in Maudlin Street; and would draw your attention to the manner in which it disposes of the points which will probably occur in the course of the transaction; the express object of such an agreement being to get rid of uncertainty, and it being one of the fundamental maxims of law that, once signed by the parties, such an agreement cannot be con-

tradicted or controlled by anything which either of them may afterwards say in the matter.*

AGREEMENT FOR SALE OF A HOUSE.

“An agreement made this — day of — between B. of &c. (the vendor) of the one part and A. of &c. (the purchaser) of the other part. The said B. agrees to sell unto the said A. and the said A. to purchase of the said B. all that house in Maudlin Street Bristol (here describe it with all additions of gardens &c.) for the price of 500*l.* sterling. It is hereby also agreed as follows: (1) That the said B. shall on or before the — day of — furnish at his own expense to the said A. an abstract of the title in fee of him the said B. to the said premises commencing with Indentures of Lease and Release dated the 1st September 1828 and the said A. shall not be at liberty to call for any earlier title and shall accept all recitals contained in the same indentures as conclusive.† (2) That all certificates of birth marriage and burial statutory declarations and other matters necessary for clearing up or perfecting the title shall be procured by the said B. at his own expense and that when the purchase is completed they shall be handed over with the deeds to the said A. (3) That the abstract of title to be furnished as aforesaid shall show a clear title in the said B. to the said premises for an estate in fee-simple without any incumbrances whatsoever. (4) That within — days from the delivery of the abstract the said A. shall investigate the title and make and deliver his requisitions thereon to the said B. and any requisitions not so made and delivered within that time shall be considered waived and herein time shall be of

* “Parol evidence cannot be given to vary, subtract from, or add to, a written agreement.”

† By the Vendors and Purchasers Act, 1874, recitals in deeds upwards of twenty years old as a general rule prove themselves (Editor's note).

the essence of the contract. (5) That the conveyance (containing all ordinary covenants) shall be prepared by and at the expense of A. and shall be executed by both parties at their own expense and the purchase-money paid by A. to B. on or before the — day of — at the office of B.'s solicitor and herein time shall be of the essence of the contract. (6) That at the time of executing such conveyance the said A. shall also enter into a valid agreement (at his own costs) to contribute to the expense of keeping up the main drain under the said premises in like manner as the said B. is now obliged to do and to indemnify the said B. from any demands that may be made on him in relation thereto. (7) That immediately on the conveyance being executed and the purchase-money paid the said A. shall have possession of the said premises. (8) That all outgoing in respect of rates and taxes shall be settled and apportioned between the parties hereto as from the day on which the said A. shall so take possession the said B. paying all such rates accruing due before and the said A. paying all accruing due after the day that possession is so taken. (9) That the insurance for £—— already effected on the said premises in the — Fire Insurance Office shall be held by the said B. until the time possession is given to the said A. and immediately thereupon shall be duly transferred into the name of the said A. (10) In case any damage from any cause whatever be done to the premises between the day of the date hereof and the day when possession shall be taken by the said A. the said B. shall satisfy and make good the same. (11) In case the purchase-money is not paid on the day hereinbefore appointed the said A. shall pay to the said B. interest at the rate of 6% per cent. per annum from that day until payment is actually made. (12) That if the said B. shall fail to make a good title to the premises within the time above limited the said A. shall be at liberty thereupon to rescind this

agreement and recover the expenses incurred by him in relation thereto and also damages for the breach of contract of and from the said B. as and for liquidated damages. And if the said A. shall fail to perform his part of this agreement the said B. shall be likewise at liberty to rescind the agreement and recover his expenses and damages for the breach of contract of and from the said A. But nothing herein contained shall prejudice the rights of either party to enforce specific performance of this agreement in the Chancery Division of the High Court or otherwise as they may be advised."*

Of course, *special* provisions will be incorporated in the agreement, where necessary, and it must be duly signed by both parties and an agreement stamp impressed.

A contract made on a sale by auction differs from one of the kind we have now been considering, inasmuch as it is divided into two parts;—the first called "Particulars," embracing a full and accurate description of the premises sold; and the second, called "Conditions," containing stipulations somewhat similar to those in the above contract, but still more fully and formally expressed. These "Particulars and Conditions" are generally printed; and underneath them will be found a short printed agreement to abide by them, which has to be signed by the purchaser, and stamped, in like manner as a private contract. My limits will not allow of my giving you any specimens of particulars or conditions of sale; but I should counsel you, before proceeding any further with this chapter, to get a print of some particulars and conditions (you are sure to find several lying about the office), and make a fair copy of them for your own use. You will see that they vary much in different cases, according to the nature of the property sold and the state of the title; and it is well to bear in mind

* I would suggest that the student would find a somewhat simpler form of agreement in Davidson's *Concise Precedents* (Editor's note).

that both these conditions of sale, and the agreements made on a private contract, require as much sedulous care in their preparation as the conveyance itself does.

After this preliminary contract has been signed by your client A., an abstract of B.'s title will be sent you in due course by B.'s solicitor. An abstract of title is a sort of summary or abbreviated copy of the vendor's title, and is furnished in every case where property is either sold, mortgaged, settled, or leased. It contains statements of facts (such as births, deaths, marriages, intestacies, &c.) necessary to elucidate the title; and also an abbreviated copy of every essential deed. For the convenience of perusal (and for no other reason) a settled form is adopted, in preparing the abstract, which I will here explain to you. The sheets of brief-paper on which the abstract is written are divided or ruled off into five margins. In the first or outer margin, the date of the deed or fact (as the case may be) to be abstracted is written. In the second margin, all statements of facts—of birth, death, marriage, &c.—are set out; and here also will be found the "Testatum" clauses, and all that part of a deed which is before the recitals (title, names of parties, &c.), and also the covenants and provisoes. In the third column the recitals are set out; whilst the fourth is devoted to the *habendum*, uses, &c.; and the fifth, or innermost, to the "parcels," and statements as to execution and registration. Let me try and make this clear by a diagram :

1. *Dates.*2. *Till, Covenants, and
Testatum.*3. *Recitals.*4. *Habendum.*5. *Parcels and General Words, &c.*

1st Jan. 1860. Indenture made between Tom Jones of Dartmoor in the County of Devon Esquire of the one part and Roderick Random of Random Hall Dorsetshire Esquire of the other part:

Reciting that by an indenture dated &c. Peregrine Pickle granted and conveyed the hereditaments and premises hereinafter mentioned to Humphrey Clinker and his heirs:

And reciting that by his last will and testament in writing dated &c. the said Humphrey Clinker devised the said hereditaments and premises (by the description of "All my house at Kensington in the County of Middlesex" &c.) to the said Tom Jones and his heirs:

And reciting that the said Tom Jones had agreed with the said Roderick Random for the sale of the said hereditaments and premises for the price of 1000l.:

It was witnessed that in consideration of 1000l. (the receipt &c.) the said Tom Jones granted conveyed and assured unto the said Roderick Random and his heirs

All that house garden and premises being No. 1 High Street in the Parish of Kensington in the County of Middlesex then in the occupation of one Abel Drugger as yearly tenant,

- | | | | | |
|------------------|---|---------------------|---------------------|--|
| 1. <i>Dates.</i> | 2. <i>Title, Covenants, and Testatum.</i> | 3. <i>Recitals.</i> | 4. <i>Habendum.</i> | 5. <i>Parcels and General Words, &c.</i> |
|------------------|---|---------------------|---------------------|--|

And all houses &c.

And all the estate &c.

To hold same Unto and To the use of
said Roderick Random his heirs and
assigns for ever.

Covenants by said Jones that he had good right
to convey—For quiet enjoyment—Free from in-
cumbrances and For further assurance.

Executed by said Jones and Random
and attested.

Receipt for consideration money in-
dorsed signed and witnessed.

Registered in Middlesex Registry
10th January 1860 B. 3 No. 1782.

A few things call for notice in this abstract. The first is, that the whole of the deed is put in *the past tense*. In fact, the abstract is recording things which, when the conveyance was executed, were then subsisting (such as the tenancy of Abel Drugger), but which, at the date of the abstract, might or might not be still existing. On that account not only are the *recitals* put in the past tense, but also the testatum, parcels, &c., which in the *conveyance* now abstracting were in the present tense. Another noticeable point is the brevity of the language: the abstract records only such part of the deed as is necessary to show Random's title; and as only the "usual covenants" were contained in the abstracted deed, they could conveniently be put shortly: had the covenants been unusual

ones (as for maintenance of drains, paving road, erecting buildings, &c.), they would have been set out *verbatim*. You will also notice that, the property lying in Middlesex, the conveyance has been registered in accordance with the Act. This you will verify by searching (through your town agent) in the registry. Had it not been registered, you would have demanded its registration in your "requisitions," before proceeding with the purchase. Of this more hereafter.

Having received the abstract from the vendor's solicitor, your first step, acting for the purchaser, will be to look it carefully through (taking notes of the deeds on a separate sheet of paper), to see that you understand and can follow the title. You will next obtain an appointment to "examine the abstract with the deeds," which latter will probably be in the office of the vendor's solicitor. You will then proceed to the examination of the deeds, which is carried on somewhat as follows:—Taking the first deed mentioned in the abstract, you will make a note in the margin of the latter of the amount of stamp-duty impressed on the deed. Then, handing the abstract to the clerk who accompanies you, you will follow him as he reads. If any addition is necessary to be made on the abstract, you will of course make it, and if there be any discrepancy between the abstract and the deed, you will alter the former so as to correspond with the latter. Whilst you are pursuing this examination, you must bear in mind that your present object is simply to verify the abstract with the deeds, and not to consider the legal effect of any document or clause. Having carefully compared all the deeds with the abstract, you should return to your own office, and then, and not till then, proceed to consider the abstract as amended and corrected, with a view to finding out the flaws in the title and sending in your "requisitions" hereon. As an example of the manner in which these latter should be

framed, and also as indicating the mode in which a title should be investigated, I here append an imaginary case.

A leasehold house at Bath is to be sold by Charles Williams to your client. The title is as follows:

1. Lease, 1st May, 1808, from the Mayor and Corporation of Bath to John Stiles, for 1000 years, at a ground-rent of 10*l.* per annum. This lease contains a covenant by Stiles to contribute towards the expense of making and repairing a private drain under the house. The lease is executed by "John Mavis," and the Corporate Seal attached.
2. Assignment of lease, 12th June, 1822—Richard Stiles to Philip Stone.
3. Will of Philip Stone, dated 3rd September, 1821, bequeathing "All his household goods and chattels" to Tom Jones. Proved in the Consistory Court of the Bishop of Bath and Wells, 9th March, 1840, by Richard Jacox, executor.
4. Assignment, 28th January, 1848, by Richard Jacox, of the first part, and Emilia Stone and John Stone, of the second part, to Richard Williams.

In the first place, it is necessary to show a clear title to this house from John Stiles, the original lessor, to Charles Williams, the present vendor. Now if you look carefully through the title, you will see that several links in the chain are wanting.

1. There is no account given of the descent to Richard Stiles, who assigns in 1822.
2. The will of Philip Stone does not seem to pass the house to Tom Jones.
3. It is not shown how Richard Jacox, Emilia Stone,

and John Stone were entitled to assign to Richard Williams; and

4. There is no account given of Charles Williams' title.

Besides this, the following points are noticeable:—

1. The manner in which the original lease was executed.
2. The circumstance of the private drain having to be maintained by the lessee, and no notice of this in any of the later documents.

Accordingly, your “requisitions” should inquire into all these matters. Below is a copy of the requisitions you should send in in the case given above; and in the margin opposite these requisitions (left blank by you) I have filled in satisfactory answers to them, by the solicitor of the vendor, Mr. Charles Williams.

No. 100, Pulteney Street, Bath.

REQUISITIONS AND OBJECTIONS TO THE VENDOR'S TITLE.

Requisitions.

Answers.

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. The original lease of 1st May, 1808, is executed by “John Mavis” (not a party to the lease), and the Corporate Seal appended. How is this? | <p>By an authority under the Corporate Seal, dated 2nd January, 1808, the Mayor and Corporation, in conformity with the provisions of their private Act, and with the consent and under the hands of two of the Lords of the Treasury, appointed Mr. Mavis as their officer to execute all leases, &c. of the corporate property for the year 1808. A copy of the “authority” is sent herewith, and the Act is now in my office, and can be inspected.</p> |
|---|--|

*Requisitions.**Answers.*

2. What is the covenant as to repairs of a "private drain" under the house? Is there any such drain?

At the time this lease was granted there was no public drainage in this part of Bath. In 1815, however, the Corporation were empowered to, and did, lay down drains in Pulteney Street. This "private drain" was then stopped up, and consequently no claim for its "repair" can now be made.

The above matters are deposed to by Mr. Thomas Hurst, Town Surveyor, whose affidavit to that effect is now in our office.

3. This lease was granted to "John Stiles," and the next deed in the abstract is an assignment by "Richard Stiles." How is this?

John Stiles died intestate, January, 1822, and letters of administration were in February, 1822, granted to Richard Stiles. This was inadvertently omitted in the abstract. An office copy of the letters of administration is in our office, and can be inspected.

4. The will of Philip Stone is insufficient to pass leaseholds?

Mr. Stone died intestate as to his chattels real, which consequently went to his next of kin (*sec. stat.*). These next of kin were Emilia Stone and John Stone, and they join the executor,

*Requisitions.**Answers.*

- Richard Jacox, in the assignment of the property. But, it is apprehended, even if they had not so joined, Mr. Jacox, as executor, had power to assign.
5. Who are the assignors, Emilia and John Stone, and Richard Jacox? See previous answer.
6. The assignment of 1848 is to "Richard Williams." Will he join in the present assignment? If not, why not? Mr. Richard Williams has recently been found lunatic by inquisition, and by a decree of the Lord Chancellor, dated 1st April, 1866, the present assignor, Mr. Charles Williams, was ordered to dispose of (*inter alia*) this house in Pulteney Street, and stand possessed of the produce of the sale upon certain trusts. It was not considered expedient to incumber the abstract with this decree, which is very long and special, but an office copy can be furnished if required.
7. Is the assignor's solicitor aware of any charge or incumbrance on the property not disclosed in the abstract? 7. No.
- (Signed) A. B., Purchaser's Solicitor. (Signed) C. D., Vendor's Solicitor.

Upon being furnished with copies of the authority, Act of the Bath Corporation, declaration of Mr. Hurst, letters of administration to John Stiles, and decree in the matter of Williams' lunacy, you would be quite justified in completing the purchase. If any one of your requisitions were not satisfactorily answered, you would have to send in "Further Requisitions" until everything was cleared up to your satisfaction. I would advise you to borrow an abstract from the office—if it were in some old matter no objection would be raised to this—and peruse it carefully, noting down your objections (or what you think are objections) on a loose sheet of paper. Then, from these notes, draw your requisitions in due form; and finally compare these requisitions with the draft of the requisitions which were really sent in the matter from your principal's office. You will find this admirable practice. I need hardly say, however, that unless you have a pretty clear general idea of the law of descent and representation it will be useless to attempt any such process; and I would further counsel you, whilst perusing your abstract, to have copies of Mr. Williams' two works on *Real Property* and *Personal Property* by your side, and to refer to them whenever there is any legal point in the abstract which you cannot clearly understand.

There is a very useful book published, called Greenwood's *Manual of Conveyancing*, which I would advise you to buy and have constantly beside you for reference at this stage of your studies. It is written exclusively on the *practice* of conveyancing (and not on the science of real property law), and I have therefore not noticed it in the "course of reading" laid down for your guidance at the end of each chapter; but it is an excellent manual for reference whilst actually engaged in practice at the office.

Having thus glanced at the subject of investigation of titles, I will now notice briefly the various classes of instruments in use in the practice of convey-

ancing,* remarking their nature and effect, and some of their salient points.

The first class of instrument is that in use for the transfer of property on sale and purchase, and known by the generic title of "Conveyance." Conveyances may be roughly subdivided into the following eight classes:

- | | |
|--------------------------------|----------------------------|
| (1) Grants in fee. | (5) Contracts for sale and |
| (2) „ in tail. | purchase.† |
| (3) „ for life. | (6) Surrenders. |
| (4) Appointments under powers. | (7) Assignments. |
| | (8) Releases. |

Of these, the first description (grant in fee) has already been explained to you at some length in the conveyance by Stokes to Styles, and of the fifth you have also been informed in the "agreement" given at the commencement of this chapter. With regard to the first, however, it may be remarked that grants are of two kinds; first, the common law grant, and secondly the grant to uses; and you will observe that in all instruments of assurance of *freehold* property, including even wills, it is the same. It is not so as regards copyholds, or chattels real or personal, to no one of which does the Statute of Uses apply. For a fuller explanation of this subject I must, for the present, refer you back to that unfailing Mentor, Williams on *Real Property*.

Six sorts of conveyances remain to be noticed—grants in tail and for life, appointments under powers, surrenders, assignments and releases. Of the grants in tail and for life I will briefly dispose: they differ from a conveyance in fee mainly in their limitations, which, in the former case, are "Unto [or unto and to the use of] A. and the heirs of his

* Vide ante, p. 43.

† A Contract for sale and purchase operates as a conveyance in Equity, although it does not pass the legal estate, at law.

body," and in the latter, "Unto [and to the use of] A.," without mention of his *heirs* at all. Grants in tail and for life are now extremely rare; the only frequent example of the former is afforded by the grant of a title from the Crown direct to a subject, a title being capable of entail. A grant for life simply is now never met with. *Life estates*, indeed, are constantly created, *followed by estates tail*, to other persons or classes of persons; but this is only for the purpose of binding down, or *settling* the property; and I will notice the subject of "settlements" further on. You may, therefore, dismiss grants *merely* in tail and for life as, practically, of no importance.

The next sort of a conveyance is an "appointment under a power." A power is an authority given by A. to B. to do some act which B. would otherwise not be enabled to do. If, for instance, A. (the owner of the fee-simple) was settling land upon B. for life, with remainders over,—B., as mere tenant for life, would not be able to cut down timber, nor to grant long leases of the property, nor, of course, to convey the fee-simple under any circumstances. But if A. were, in this same deed, to give B. a *power* to lease for ninety-nine years, or a *power* to cut down timber for his own benefit, or a *power* to appoint the land, by deed or will, either to anybody he (B.) might choose—which is called a "general power of appointment"—or to any one or more of several *named* persons, or classes of persons (as, for instance, to such of B.'s children as he should choose)—which is called a "special power;"—in every one of these cases B. would acquire "power" to do the thing pointed out. Now, suppose A. gives B. a power to appoint the property by deed to any one of his (B.'s) children in fee, and B. should, afterwards, appoint to C., his eldest (or any other) son, the instrument by which this would be effected would be called "an appointment under a power." There are two very noticeable points in this class of instru-

ments: the first is, that the "terms of the appointment must be strictly pursued;" the second, that the appointee (in the case put, C.) takes his estate not from the appointor (B.), but from the donor of the power (A.). In illustration of the former point; if B. had appointed to D., his *grandson*, the appointment would have been void, because the "terms of the power" pointed to B.'s *children*—not grandchildren; and again, if B. had appointed by will, it would likewise have been void, because the power said "by deed." I must further tell you, that "powers" can be exercised over all kinds of property, personal as well as real; and that in all *settlements* (or tying up of property) powers of various kinds are always bestowed upon the "first taker"—that is, the person who "takes" the first, or earliest, interest in the property.

The term "assignment" has a twofold meaning; first, it is used to express the transfer by a lessee of property to a second person of the remainder of his term under the lease; and secondly, it is used as meaning the *absolute transfer* of all kinds of purely *personal* property in like manner as a conveyance means a transfer of *real* property. It is in this second sense that I intend to speak of "assignments" here. I have shown you that if you want to sell land to anybody, you can only do so *by deed* (because of the Statute of Frauds, and subsequent Acts of Parliament), duly stamped and sealed, which deed is termed a "conveyance." But if, in like manner, you want to sell *personal* property, such as a chest of drawers, a race-horse, a bowie-knife, or a chamber organ, you can do so without the formality of a deed, by merely *delivering over* the property with one hand, and receiving the money for it with the other. This is called an assignment.

Nearly all kinds of purely personal property can be thus "assigned," without the necessity of any deed or writing whatever. To this there was one exception, however, in

the case of what is termed a "*chose in action*." A chose in action is an interest not realized or reduced into possession—something *in fieri*, that is to say. A debt is a *chose in action*: so is a *right to sue*. The law said that *choses in action* could only be transferred by writing, in which the transferor should give the transferee a *power to sue* in his (the transferor's) name—which is called a "power of attorney." Thus, if A. owed B. 10*l.*, and B. wanted to sell this debt to C. for 5*l.*, the transaction would *not* be complete by C. merely handing B. 5*l.*, and B. saying, "now you have got A.'s debt for yourself." Instead of this simple method of transfer, B. would have had to have given C. a regular written assignment of the 10*l.* due from A., with a power of attorney to C. to sue A. for it (if necessary) in B.'s name. In equity, it is true, the rule was otherwise, and A. could have assigned a *legacy* coming to him under B.'s will to C. without any power of attorney, and if B.'s executor, D., refused to hand over A.'s legacy to C., the latter could have called for the aid of the Court of Chancery to have compelled him to do so; but at law some sorts of *choses in action*, a debt amongst them, could not have been assigned without a power of attorney.*

So much for an assignment. We will next take the instrument known as a "release." Until the year 1841, releases were (owing to a technicality now abolished) in constant use, but they are now of rare practical occurrence. A release at common law is the mode of assurance adopted in two classes of cases: first, where a person who has a

* A bill of exchange, promissory note, copyright, patent, and (now) a policy of insurance, are, however, assignable at law without any necessity for a power of attorney.

And by 18 & 19 Vict. c. 111, bills of lading are now assignable, as are also life policies by 30 & 31 Vict. c. 144, and marine policies by 31 & 32 Vict. c. 86; and by 36 & 37 Vict. c. 66, s. 25, r. 6, if a chose in action be assigned absolutely, then the assignee can sue for it in his own name, provided that express notice of the assignment shall be given to the debtor (Editor's note).

future interest in real property “releases” that claim to him in possession; as where a remainderman releases to the “particular” tenant; secondly, where one of several persons equally entitled in possession (as joint tenants and coparceners) releases his or her share to the others. But for ordinary purposes, the form of a release is unsuitable (it being necessary for the releasee to be in actual or constructive possession of the property released); and, indeed, as between vendors and purchasers of freehold property, a grant is, at the present day, almost invariably the form of conveyance used.

In the old books you will notice another instrument for the transmutation of possession, called a “feoffment,” and which is fully explained in Williams’ *Real Property*. Since the year 1845, however (when an act was passed* enabling all real property to be conveyed by *grant*), a feoffment is only resorted to in a few very exceptional instances, as in the case of a conveyance of gavelkind land by an infant heir under the custom of gavelkind.

One description of purchase-deed remains to be noticed—a “surrender.” This is the instrument invariably used for the conveyance of copyhold property. You have already learned from Stephen’s *Blackstone*, and Williams’ *Real Property* what copyhold tenure is; how it is founded on the old “*villein* and *baron*” laws of the feudal system, and how (not having been abolished by a statute of Charles II., which did away with the other feudal customs) it is still in force in a large number of “manors” throughout the kingdom. This ancient tenure is, indeed, constantly losing ground through the operation of the Copyhold Enfranchisement Acts; but it still continues an important (and, as some say, an anomalous and undesirable) feature in our real property system. When a copyhold tenant desires to

* 8 & 9 Vict. c. 106.

sell his property, he dare not do so by the ordinary mode of grant, for that would cause a "forfeiture" of his estate to the lord of the manor; but he has to effect it by means of a surrender—a short instrument of a formal character, in which the names of the parties, the consideration, and the "parcels" are fully set out, which is entered on the court rolls by the steward of the manor, and "presented" at a customary court; after which, on payment of certain "fines" to the lord of the manor, the purchaser is "admitted" a copyhold tenant in due form. The customs of copyhold manors vary greatly in different parts of the country; in the manors of Hackney, Cheltenham, and Minchinhampton, I have been told there are some especially curious customs. I should recommend you (unless, of course, actual practice happens to come in your way) not, for the present, to consider the tenure of copyhold very minutely, as it may tend to confuse your newly-formed ideas of the more important *socage* or freehold tenure from which it differs so materially. In the last year or so of your articles, I shall advise you what books to study on this subject.

The principal instruments in use in the practice of conveyancing for purposes of sale and purchase having been thus adverted to, we come next to the class called leases, which can be disposed of more readily. A lease, as you have learned from Williams' *Real Property*, is a term of years granted by the owner of the fee (or by some other person duly authorized) to a second person, who is called the lessee. Whenever a man contracts for the possession of property for a certain definite number of years (be it two, or two thousand) he is said to have a "lease" of it. The Statute of Frauds enacted that every lease for more than three years, or at less than three-fourths of a rack-rent (that is, a *full* rental) should be in writing; and, by a later act, they must now be by deed under seal to have

full legal effect, although in practice it constantly happens that people take houses for long terms upon the mere *equitable* security of an "agreement for a lease,"—a contract for letting and hiring, which, properly speaking, can only be fully effectuated by a formal "lease," duly stamped and executed. The ordinary form of a lease is this:—In a preliminary recital the lessor recites his title (that is, the grant to him in fee, or the settlement authorizing him to grant leases, as the case may be);* and he then goes on to let the property to the lessee, in much the same manner as the fee itself would be conveyed, excepting that the "operative words" are "demise" in place of "grant and convey;" and that the words "executors, administrators and assigns" are employed instead of "heirs and assigns" in the limitations. These words of limitation express the destination of the property: in the case of a freehold, the *heir* would take, if the property were not otherwise disposed of; and so in the case of a leasehold (personal property), which goes to the lessee's executors or administrators in the first instance, for the payment of debts, and when these are discharged, then to the person to whom it is bequeathed by the will (the "specific legatee"), or, if it be not so bequeathed, to the lessee's next of kin. The *habendum* of the lease specifies the term for which the property is to be held, and the *reddendum* the rent which is to be paid. The covenants by the lessor are somewhat similar to those of the vendor in a grant; but following these are always to be found covenants by the lessee to pay the rent reserved, keep the premises in repair, insure them against fire, and further as may be agreed. These covenants bind down the lessee so that he is liable to an action if he makes any default; and they are the only hold, except the remedy by "distress," which the lessor

* There is no absolute necessity for this; indeed, it is not usual (Editor's note).

practically has upon the lessee.* Covenants, alike in conveyances, leases, and all other manner of deeds, are of two kinds—"collateral" or personal, and "running with the land." The distinctions between them are far too intricate to be traced here; it may be said generally, however, that covenants "for title" (quiet possession, further assurance, &c.) "run with the land" in the hands of a sub-purchaser or assignee.

Another clause in a lease to which your attention should be now directed, is the "proviso for re-entry," the effect of which formerly was that if any breach of the lessee's covenants occurred, the lessor could summarily turn the lessee out, and recover possession of the premises; but modern legislation has greatly diminished the power of re-entry, and, consequently, lessors must now rely mainly upon their legal remedies.

One summary remedy, and that a powerful one, every landlord has had from time immemorial against his tenant, however—that is, the power of "distraining" for rent. If a tenant (lessee, or yearly or monthly tenant, it makes no difference) does not pay the rent agreed upon at the time it becomes due, the landlord may obtain a "distress warrant," and thereupon the sheriff's officers come in and "distrain"—that is, seize upon—the tenant's goods, and ultimately carry them away, and sell them, in order to pay the rent. This power is a very formidable one, but it is absolutely necessary for the full protection of the landlord—a person much favoured by the ancient English law. If the distress be wrongful (as if no rent were in arrear), the tenant has his remedy by the action called "replevin."

* The action of ejectment, as between lessor and lessee, is so hedged round with formalities and restrictions (all enuring to the benefit of the defaulting lessee) as to be seldom really available in practice. But the Judicature Act has now simplified matters by allowing the action to be brought in the Chancery Division.

This "power of distress," it must be remembered, is quite independent of the lease (in which it is seldom even named), and does not preclude the lessor from suing the lessee on his covenant to pay rent, if he be disposed to do so, nor from his giving him due notice and afterwards "ejecting" the lessee from the premises, if he thinks fit.

An "assignment of a lease" is a transfer by the lessee of his whole interest in the lease to another. Thus, if A., in 1820, leased a house to B. for eighty years, and B., in 1830, disposed of the remainder of his term (seventy years) to C., this would be an "assignment" of B.'s lease, and B. would be the assignor and C. the assignee. The most noticeable point in the framework of an assignment is, that the original lease is recited in the first place, with the "parcels" fully set out as they are described in the lease; whilst, after the *habendum* clause, the parcels are only shortly referred to, with any alteration or addition that circumstances may necessitate. I advise you to verify this observation (as, indeed, every one in this book which is founded on precedents) by getting hold of a draft assignment, and perusing it for yourself.

A subdemise or "underlease" differs from an assignment, in that only a *part*, and not the *whole* of the term is granted by it. Thus, if X. leases property to Y. for twenty years, and then, two years after the date of the lease, Y. wants to dispose of the term to Z., he can (as we have seen) "assign" it to him for the remaining eighteen years; but he can also effect this by way of "underlease," by simply selling to Z. the remaining eighteen years, *less the last day thereof*. You would think that one day cannot make much difference; but it does, and a very important one. In the case of an assignment, the assignee takes, in every respect, the place of his assignor—the lessee in the original lease; consequently, the lessor is his landlord, and can sue him on his assignor's covenants in the

original lease. But if only a *part* of the term (however large) is disposed of by the lessee, the purchaser from him is tenant not to the lessor, or original landlord, but to the lessee. A sub-demise may thus, in some cases, be preferable to an assignment, as where the new purchaser desires to avoid the risk of being sued for breach of covenant by the lessor. Therefore, when a leasehold estate is mortgaged, the mortgagee generally takes his security by way of underlease preferably to assignment.

Incidental to the subject of leases, are attornments and licences. An attornment is an acknowledgment by a tenant that he holds of a particular landlord: it is not now often necessary. A licence usually occurs in the case of copyholds: by the customs of most copyhold manors, if a copyholder grants a lease for more than a year without the consent of the lord, he forfeits his estate—in legal parlance, the “lease works a forfeiture.” But if the lord’s consent be obtained, there is no such result, and the lease is a valid one. This consent by the lord is termed “a licence,” and it is necessary to be made by deed, and duly stamped.

The third description of conveyance we have to deal with are securities. These are again subdivided into mortgages of real, and mortgages of personal, property (mortgages of *chattels* personal—such as furniture—are pledged by means of a distinct class of instrument called a bill of sale), transfers and bonds. Of these a mortgage proper is the most important instrument. A mortgage is a deed whereby property is *conveyed* by its owner, called the mortgagor, to a second person, called the mortgagee, in consideration of a sum of money lent by the latter to the former. The premises and operative part of the deed are almost precisely the same as in an absolute conveyance; but, inasmuch as it is only intended to operate as a *security* for the money advanced, clauses are added after the *habendum* for effectuating this purpose. These clauses are of two descriptions, the one for the protection of the mortgagor, and the other

for that of the mortgagee. The former is called a proviso for redemption, which stipulates that if the money lent is repaid by a certain day (usually six months after the date of the mortgage), the mortgagee will reconvey the mortgaged premises to the mortgagor, and that, in default of so doing, the mortgagor will pay the mortgagee interest at a fixed rate, and at fixed periods. Sometimes the mortgage-money is lent for a specified number of years only; and in that case the proviso for redemption is of course altered to meet the circumstances. This proviso is intended for the protection of the mortgagor, and to prevent the mortgagee claiming the property as his absolutely; but following it are powers and trusts for sale, which operate equally in favour of the mortgagee. The operation of these clauses is, that in case the mortgagor fails to pay the interest regularly, the mortgagee, upon due notice, is enabled to sell the property, and out of the money so realized repay himself his principal money, interest and costs, handing over any surplus which remains to the mortgagor. As in all other deeds, a mortgage invariably concludes with covenants, which are entered into by the mortgagor, and, besides the usual covenants for title, bind him down to repay the principal and interest. You will have observed that covenants are invariably entered into by the parties on behalf of themselves, "their *heirs*, executors, administrators, and assigns," and that whether the property conveyed or mortgaged is real or personal. The reason for this is, that the "heirs" being named, the covenant becomes a "contract under seal by which the heirs are bound," and thus (as you will read in Chitty) has priority over all other kinds of contracts.*

* Save that by 32 & 33 Vict. c. 46, in the administration of the estate of persons dying from and after the 1st of January, 1870, a specialty contract has no priority over a simple contract. Bedford's *Intermediate Examination Guide*, 3 (Editor's note).

The relationship existing between mortgagor and mortgagee was strikingly illustrative of that peculiar division of our laws into common law and equity which has been before noticed. The property mortgaged is (as we have seen) conveyed to the mortgagee in the same way, and with the same limitations, as if he were the absolute purchaser; and therefore common law looked upon him *as* the absolute legal owner. The common law, in effect, said, "The property is conveyed to you, therefore we must regard you as the owner of it; and any proviso for redemption which may be imported into the conveyance we look upon as a mere matter of private arrangement between yourself and the other party. Until you reconvey the property back to the mortgagor, you, and you alone, are, in the eyes of the law, the real owner of the property." The consequence of this theory was that, whilst the mortgage security was subsisting, the mortgagee was the only party recognized at law. Again, if ejectment has to be brought against one of the tenants of the property, it is the mortgagee and not the mortgagor who must bring it. Nay, so far does the doctrine extend, that even if the mortgagor continues in actual possession of the premises, he is looked upon at law as only a "tenant at will" of the mortgagee, who can turn him out at pleasure—unless restrained from doing so by special restrictions in the mortgage deed itself. So that, you see, if Mr. Smith has a house and land worth 10,000*l.*, and he borrows 1,000 of Mr. Brown upon them by mortgage, and continues to reside himself in the house, and cultivate the land as before—still it is Brown, the mortgagee, who was looked upon at law as the owner of the property. Thus, if left entirely to the common law, Smith, the mortgagor's, position would have been a very precarious one indeed, and he would have been quite at his mortgagee's mercy.

But here equity stepped in for the mortgagor's protection. Equity said, "Not so; the mortgage was only

intended as a *security*, and not as a *conveyance*; all that Brown, the mortgagee, is entitled to is to have back his principal and interest. Therefore, whenever Smith paid that back, the Court of Chancery would have compelled Brown to have reconveyed the property to him; and even if Smith had made default, and Brown had sold the property under his power of sale, still he would have only been entitled to his principal and interest—the rest was Smith's. In a word, although I could not have prevented the Courts of Common Law looking upon Brown as the real owner, still, in my Court of Chancery, Brown was a mere *trustee* for the substantial owner, Smith, whose equity of redemption it protected."

Thus the mortgagee was the *legal*, the mortgagor the *equitable*, owner of the mortgaged property.*

If the property so mortgaged is a fee-simple, it is of course conveyed to the mortgagee "and his heirs;" if personal, to him "his executors, administrators and assigns:" but whether the property mortgaged is real or personal, the money lent belongs to the mortgagee as *personal* property, and on his death his *personal* and not his *real* representatives are entitled to it. Therefore, if A. mortgage his fee-simple estate to B., and B. dies, and his executors call in the mortgage money, B.'s *heir*† will reconvey the property to A., but it is B.'s *executors* who are entitled to receive the money on behalf of B.'s next of kin or the beneficiaries under his will.

After the mortgage has been executed, the relation of mortgagor and mortgagee continues until the money is called in, which must be by notice, if so provided in the mortgage deed.‡

* But now by the 24th section of the Judicature Act, 1873, the Courts of Common Law take cognizance of all equitable rights and claims. See Bedford's *Guide* (Editor's note).

† By 37 & 38 Vict. c. 78, s. 4, the legal personal representative may reconvey the legal estate (Editor's note).

‡ If the mortgagee desires to call in his money, and there is no

Chattels real (leaseholds), *choses in action* (such as debts due and policies of insurance), partial interests, and contingent interests in real property, can all be mortgaged in the same manner (each after its kind) as a fee-simple estate. But if it is desired to mortgage chattels *personal*—furniture, stock in trade, &c.—it must be done, not by a mortgage, but by an instrument called a bill of sale. This is indirectly a consequence of the bankruptcy laws, and I will try to explain to you the reason for this distinction. Furniture and stock in trade—personal movable property—are the first sources to which a creditor has to look for payment of his debts. In a commercial country like ours, it is a great object of the law to sustain public credit, as, if that is once shaken, all security in commercial transactions is at an end. Now, it would obviously tend to weaken public credit if men were allowed to privately pledge or mortgage their goods and chattels, and yet retain them in their own possession. Tradesmen and others, seeing the secret mortgagor in apparent possession and enjoyment of his furniture and stock in trade, would give him credit on the strength of such possession; and then when the debtor failed to pay the money, and the creditors obtained execution against his goods, they would be met by the information that all this while those goods were not the property of the debtor, but were mortgaged beforehand to somebody else, whose debt must, of course, be paid prior to those of the execution creditors! Such a state of things would be monstrous,—would destroy public credit and national prosperity; and therefore, to obviate any possibility of this, it is enacted that every mortgage of *personal* property must be in the form of a bill of sale, which must, within twenty-one days of its execution, be

notice provided for in the deed, he can do so at any time, and eject or foreclose in default. But the converse does not hold good; and, if the mortgagor wishes to redeem, the mortgagee is entitled to six months' notice in any case.

registered at the public office of the Queen's Bench Division of the High Court. As soon as the bill of sale is thus registered, it is made known to everybody who chooses to inquire, by means of a book kept for the purpose at the office; and further, certain commercial bodies, called "Trade Protection Societies," make a point of publishing the particulars of every bill of sale registered in "Circulars," which they distribute amongst their subscribers. The consequence of this is, that almost as soon as a bill of sale is given it is made public; and if a tradesman chooses, after knowledge of this, to trust the giver of the bill, he does so at his own risk. But even when registered, the bill of sale is of no effect against creditors in the event of the debtor's *bankruptcy* whilst the goods included in the bill are still on his premises and in his apparent possession if the debtor be a *trader*; and in such a case the Court of Bankruptcy will take away these goods from the bill-of-sale creditor and consider them as part of the general "assets."*

It is principally in consequence of this that another sort of security, called a bond, is so often resorted to. When a man gives one of these bills of sale, the person advancing money on it (the mortgagee, that is) has still to protect himself in case of the bankruptcy of his debtor, particularly if a *trader*; and for this a *bond* is prepared, in which two or more friends of the principal debtor, called his *sureties*, bind themselves under seal to pay the debt in case the bill of sale should in any way be defeated. The principal debtor remains *primarily* liable; but, failing him, his sureties. Besides this special purpose, bonds are frequently resorted to in cases when the security offered would be otherwise insufficient. Thus, where a man borrows money repayable by instalments on the security of his policy of assurance, he *assigns* the latter to his creditor; but, inasmuch as he might

* See also 24 & 25 Vict. c. 91, and more particularly 29 & 30 Vict. c. 96, whereby the registration of bills of sale must be repeated every five years (Editor's note).

fail to pay the money by the instalments agreed on, and at the same time *go on living*, so that the creditor cannot get hold of the amount assured to satisfy his debt, he has to enter upon a bond with sureties, the latter of whom promise to pay the instalments as they become due, in case the principal debtor does not do so. Bonds are also in use for other purposes—they are given to the registrar of the District County Court by a *replevisor*,* when goods are asserted by the latter to have been taken from him wrongfully on a distress, and in a variety of other cases.

The only other security we need here notice is a transfer of mortgage. If A. has mortgaged property to B., and C. offers to take the mortgage security off B.'s hands, paying him his principal and interest accrued due, B. can transfer the mortgage security to C. with a power of attorney; and on C.'s giving notice thereof to A., he becomes, to all intents and purposes, the mortgagee. Transfers are, generally speaking, very short and simple instruments, and are very often endorsed on the principal mortgage deed.†

The fourth class of deeds are settlements, which are various in their objects and nature. The most familiar description is, perhaps, a marriage settlement, which is a deed made in contemplation of a marriage, by which the property of the contracting parties is settled upon them and their children as may be agreed on, thus obviating the possibility of the husband making "ducks and drakes" of his own and his wife's money, and leaving his children destitute. No woman who has a penny of her own ought

* Although the proceedings in replevin are, since the Judicature Acts, similar to those in any other action, this bond must still be entered into (Editor's note).

† It is worth noticing that a mortgagee has no power to do more than transfer his mortgage-debt on payment of his *principal and interest*. If, therefore, any additional sum, however small, is required to be borrowed, the original mortgagor must join in the transfer to make the transaction binding on him as regards such additional sum.

to marry without some settlement of this nature; because, inasmuch as in its absence the law gives all her *personal* property in possession, absolutely, and a life interest in her *real* property to her husband, the latter may possibly misappropriate it, or, even if perfectly honest, may become bankrupt, in which case the wife's property would be seized by his creditors. It is most surprising, under these circumstances, that so many young women, possessed of small fortunes, marry without any settlement. The settlement is sometimes preceded by "marriage articles" (which are to the settlement what a preliminary contract is to a conveyance), in which case, whenever executed—whether before or after marriage—the settlement "refers back" to the date of the articles. If there be no preliminary articles, however, it is necessary that the deed should be dated and executed *before* the marriage, as otherwise it will be what is called a *post-nuptial* settlement, and liable to be defeated by the husband's creditors under certain circumstances. The frame of a marriage settlement is ordinarily this: the property of both parties is conveyed to trustees, in trust, to invest, and to pay the yearly profits to the husband during the joint lives of himself and wife, but without power of anticipation, after the death of one of them to the survivor, with "limitations over" to the children of the marriage, and, failing such children, to the next of kin of the party bringing the property into settlement. Sometimes a power of appointment to a named class of persons—a special power of appointment—is given to one or other or both of the parties, and this is in lieu of, or in addition to, regular limitations. Under such an instrument as this the trustees become the legal owners of the property, which they stand possessed of upon the trusts declared in the settlement.

Besides marriage settlements, there are various other instruments of this class, the principal of which are volun-

tary settlements, partnership deeds, and entailing deeds. A voluntary settlement is one made *not* for a valuable consideration. If A. settles property upon B. in consideration of 1,000*l.* paid by B., the latter, having given a valuable consideration, is entitled to the property comprised in the settlement not only as against A. and his real or personal representatives, but as against A.'s creditors also. In like manner, if Mr. C., *previously* to marrying Miss D., settled 10,000*l.* upon her, this would, without any pecuniary consideration, be good against C. and his creditors, because in the eyes of the law *future marriage* is looked upon as a valuable consideration—just as much as money itself. But if E. were to settle property upon F. (a stranger or relative) without any pecuniary consideration, this would be a *voluntary* conveyance; and so it would be if G. were to settle property upon H., *his then wife*, because, the marriage being *prior* to the settlement, there is *no consideration* for it. There are very great differences between a voluntary settlement and one made for value—whether that be a future marriage, money, or money's worth. The latter is good, as a general rule, not only as against the *settlor* himself, but against his creditors and trustees in bankruptcy; the former is good only as *between the parties*, and not in case of bankruptcy or insolvency. A partial exception to this is, however, allowed in the case of a *post-nuptial* settlement (before referred to); it being competent for a man being a trader to make a voluntary settlement which will be good as against his trustee in bankruptcy, unless the settlor become bankrupt within two years after the date of the settlement, or at any subsequent time within ten years; provided, in the latter case, the parties claiming under the settlement cannot prove that the settlor was, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement.* This one favour-

* Bedford's *Guide to Bankruptcy*, 3rd ed. 79.

able exception to the rule restricting voluntary settlements is, however, watched with great jealousy by the Courts, as being liable to gross abuse. There was (besides the question of bankruptcy) another important difference between voluntary settlements and those made for valuable considerations, which was that the Court of Equity would not carry a *contract* for a settlement of the former description into execution, whilst it would in the case of an instrument of the latter kind. For instance, if A. agreed to settle (or to sell) property to B. in consideration of B.'s paying a sum of money to A. therefor; in this case, although no money passed at the time of the agreement being entered into, equity would enforce the contract at the instance of either party; would make B. pay the money and A. settle (or convey) the property in the manner agreed on. So in the case of marriage articles; the Court of Chancery would compel the parties, after the marriage, to execute a legal settlement in accordance with the articles. But supposing A. in writing agreed with B. to *give* him certain property; or supposing C. agreed to settle property upon D., his wife: in these cases if A. or C. repented of their intention, and refused to execute a legal settlement or conveyance, equity would not compel them to do so, because it did not profess to enforce *voluntary* agreements. From this state of things arose, no doubt, the well-known old proverb. "Give a thing and take a thing is false man's plaything," because the "false man" (the voluntary contractor) could not be compelled to carry out his engagement by the Courts. So much for the difference between valuable and voluntary, ante-nuptial and post-nuptial, settlements.

Another kind of settlement is a deed of partnership, which is an instrument by which two or more persons agree to carry on a business together, and to contribute capital and labour in a specified manner. The utility of a deed of partnership is, that it shows at a glance what each partner is entitled

to at the hands of the others, and, in like manner, for what he is liable; thus saving an infinity of disputes. As a general rule, the Chancery Division of the High Court will not enforce specific execution of articles of (*i.e.* agreement for) partnership; but, the partnership deed once executed, it will interfere on behalf of any party thereto who claims its interposition, and will insist upon the provisions of the deed being fairly carried out. The courts of law (as I have before observed) refused to adjudicate between partners *as such*: and the consequence of this was that the Court of Chancery was the only tribunal to which partners could appeal in case of a difference. You may, perhaps, take it for granted that (speaking broadly) the Court of Chancery was the only Court for the interpretation and construction of trust deeds, settlements, partnership deeds, and wills of real property. But, at all events, this was *always* so in the case of partnership deeds.* The objects and provisions of deeds of partnership are so various that I cannot even attempt to summarise them here. This class of deed is generally drawn up in somewhat untechnical language, and in a form easy to be comprehended; and I would therefore advise you to peruse two or three for yourself, and note the provisions made in them for various occurrences and casualties in the course of the partnership connection.†

A deed of entail is generally resorted to by the owner of the fee-simple in real property, when he desires to settle it strictly upon his eldest son and *his* children, in order to found a family estate, or, so far as may be, perpetuate one

* In the matters of partnership, trusts, &c. I must refer the student to the Judicature Acts, ss. 25 and 34. See also the rules thereunder fully treated on, in Bedford's *Guide* (Editor's note).

† A private partnership deed always specifies the length of time during which the partnership is to continue. But if two or more persons enter into co-partnership without any formal contract their connection is said to be a "partnership at will," and may be severed by either party, at any time, without notice.

already established. Suppose, therefore, A. to be the owner of an estate in fee-simple, which he wishes thus to entail upon his unmarried son (B.): in this case he grants the property to a stranger (C.)—who is termed the *feoffee to uses*—to hold *to the use* of him (A.) for life, and after his death to the use of B. and the heirs of his body with remainders over. So long as A. lives, he has the life estate, and, being the protector of the settlement, B. cannot, without his consent, dispose of the property. After A.'s death, B. is tenant in tail, and can bar the entail and the remainders over by means of a disentailing deed enrolled in Chancery; but if B. does not so bar the entail, the property will descend, on *his* death, to his eldest son. The chapter on "An estate tail" in Williams' *Real Property*, will fully explain the operation of a settlement of the description here given.

The last great class of legal instruments are wills. A will is the expression by the owner of property of his wishes in regard to its disposition after his death. It differs from a conveyance or settlement in the following respects, amongst others. (1) It takes effect not from its date, but from the death of the testator. (2) It requires no stamp-duty to be paid until after such death. (3) It requires to be executed in a particular manner prescribed by the "Wills Act." (4) It does not take effect as to *personal* property until after it has been *proved* in the Court of Probate. (5) Its *interpretation* rested with the Court of Chancery, which construed it more liberally and untechnically than a settlement or conveyance *inter vivos*. (6) It can be revoked in various ways. Of each of these points, briefly in their turn.

1. A will does not take effect from its date, but from the death of the testator. That is to say, the former date only *indicates* the operation which is to be *carried into effect*

afterwards. If the property remains unchanged between the date of the will and the testator's death, there is, of course, no difficulty: A. devising land in 1842 to B., and, dying in 1852, the land goes to B. at the latter date. Supposing, however, in 1842 A. has two freehold houses, and no other real property; and in 1842 he makes his will, and leaves "all his real property" to B.; and in 1852 he buys two more freehold houses, and dies in 1862 without having altered his will. In this case B. takes all four houses, and not only the two which were the testator's at the time of his making his will, because "a will speaks from the death of the testator." But there is a doctrine called "ademption," which, to some extent, interferes with this rule. The theory of ademption is, that if a man leaves property by a special description in his will, and afterwards disposes of or loses that property and then dies, the person to whom the property was left, not only shall not have it, but shall not have any compensation for it either. This imports a new rule into the construction of wills, namely, that as to specific bequests or devises, the will *may* speak from its date, and not from the testator's death. For instance, if in 1850 A. has a brown mare, fifteen hands high, named "Bessy," and in 1851 he bequeaths it to B. by that description; and in 1852, "Bessy" drops a brown foal and dies, and this foal is named "Bessy" after its dam, and when it is fully grown exactly answers to its dam's description in A.'s will, and afterwards A. dies; B. cannot claim this second "Bessy," because the bequest to him *adeemed* when the first mare died. A.'s executors will take "Bessy," and leave B. without any compensation.

2. A will requires no stamp-duty until after the testator's death. This is only common sense; because as no one gets anything by the will until the testator is dead, it is only fair that Government should wait for *its* due till that time. When the testator dies, the persons to whom

he has devised his *real* property (which in this case includes leaseholds) pay what is called "succession duty" upon it. As to the *personal* property, two sets of duty have to be paid: the first by the executors, when they prove the will, upon the whole value of the testator's property—this being called "probate duty;" and the second by the various legatees, who have afterwards to pay "legacy duty" upon the value of the property left to them.

3. As to its execution. A will must be executed by the testator putting his signature or mark at the end (if it is written on several sheets, it is usual to sign at the end of each sheet); and it is absolutely necessary that his signature must be attested by two witnesses, who must both see him sign, and then sign their own names whilst he is looking on. These formalities are adopted to avoid (as far as may be) fraud and forgery; they are imposed by the "Wills Act" (1 Vict. c. 26), and if not strictly followed the will is absolutely void.

4. Immediately after the testator is dead, the persons appointed in his will as executors take possession of his effects, which are valued. They then "prove" the will in the Court of Probate, pay "probate duty," as above detailed, and administer the effects. If there is any dispute or doubt as to the will having been properly executed, or as to the sanity or mental competency of the testator, these questions are tried by the Court of *Probate*, which either allows the will to be duly proved, or rejects it. Any questions which might afterwards arise as to the *construction* of any part of the will, were tried by the Court of *Chancery*.*

5. The rule which the latter Court acted upon in the construction of wills was "that the *intention* of the testator is to be observed." Words which would have one opera-

* I must here again refer the student to the 24th section of the Judicature Act (Editor's note).

tion in a deed may thus have quite another in a will. For instance, if in a deed between A. and B., A. conveys property "Unto and to the use of B. and his assigns," these words, for the want of the word "heirs," would pass a life-estate only, and not the fee, to B. In a will these words would pass the fee. Again, in a will, the words "to A. and his heirs" *may* be so controlled by the obvious intention of the testator as to be construed "to A. and the heirs of his body." Each case of this sort must, however, stand on its own merits, and no general rule of construction can, with any certainty, be laid down.

6. A will may be revoked (1) by a new will—the *later* will taking precedence of the earlier—(2) by a codicil to an existing will, (3) by the destruction of the will, by which means either a will of earlier date may be revived, or, if the will destroyed is the only one, the property will have to be administered as that of an intestate, and (4) by marriage.

The above is a bare enumeration only of a very few of the main points in which a will differs from a deed *inter vivos*. The subject is a large and most important one, and should be studied by you in outline now, and in greater detail hereafter.

By way of conclusion to the practical part of this chapter, I here append a short list, showing in what manner the work of preparing different deeds is shared between the different solicitors employed, and by whom the expense is borne.

<i>Nature of Document.</i>	<i>By whom prepared.</i>	<i>At whose expense.</i>
1. Conditions of Sale	Vendor's Solicitor	Vendor's
2. Agreement for purchase	do.	do.
3. Abstract of title	do.	do.
4. Conveyance	Purchaser's Solicitor	Purchaser's
5. Mortgage	Mortgagee's Solicitor	Mortgagor's
6. Reconveyance (on mortgage being paid off)	Mortgagor's Solicitor	do.
7. Surrender	(Generally) the Steward of the Manor	Purchaser's
8. Deed of Covenants to accompany same	Purchaser's Solicitor	do.
9. Conditional surrender	Mortgagee's Solicitor	Mortgagor's
10. Lease	Lessor's Solicitor	Lessee's
11. Counterpart	do.	Lessor's
(Unless provided for otherwise in the agreement)		
12. Marriage settlement (of lady's property)	Wife's Solicitor	Husband's
13. Do. (of gentleman's property)	Husband's Solicitor	do.
14. Disentailing deed	Tenant for life's Solicitor	Tenant for life's
15. Assignment	Assignee's Solicitor	Assignee's

PART II.

Course of Reading for the Second Year: Chitty on *Contracts*—Williams' *Personal Property*—The Statute Law—General Analysis of the Statutes preliminary to their study.

It is somewhat to be regretted that Chitty on *Contracts* should be one of the three books selected for the examination of two-year old students* at the "Intermediates." The book, apart from all question of bulk, is certainly an intricate one. It contains a vast body of cases, many of them of a conflicting character, and which it is simply impossible for any lad of eighteen or nineteen to reconcile, or even to analyze: and many pages are devoted to the discussion of abstruse and doubtful points of law. Still, as the examiners seem latterly disposed to frame their questions from the simpler and broader portion of the text; and as, moreover, Chitty's book, as an exposition of the Common Law, is a work of undoubtedly high merits; the evil is, possibly, more apparent than real. What I shall attempt here, is to indicate the manner in which you should read the necessary chapters of Chitty on *Contracts*, in order more easily to obtain some general knowledge of the matters therein treated upon, and, at the same time, satisfy the requirements of the "Intermediate" examiners.

The first chapter is divided into four sections: (1) Of the kinds of contracts and their requisites, (2) of implied contracts, (3) of the form and construction of contracts, and (4) of stamping agreements. Now, in the first place, I would counsel you, for the present, to *omit reading the fourth section altogether*. When you have learned that a contract or agreement must bear a sixpenny stamp—which stamp must be impressed within a fortnight of the execu-

* The student under the new rules must have served half of his articles now before going in for the Intermediate (Editor's note).

tion of the agreement—you will have learned all that it is requisite for you at present to know : any nice distinctions upon this subject are quite beyond you at this stage of your studies ; indeed, the recent Stamp Act has so simplified this subject that unless particular occasion arises in practice, you will scarcely ever be necessitated to inquire as to the cases when an agreement is or is not good when not so stamped. Your reading of the first chapter is thus narrowed to the first three sections, which are all contained in about a hundred pages ; and as you may allow yourself one clear month for familiarising yourself with them, you need be under no great apprehension of them.*

Having carefully read the introductory “definition of terms,” you will proceed to the “different kinds of contracts.” This must also be carefully studied : but I would warn you on no account to concern yourself with the numerous foot-notes lying at the bottom of each page. These notes mainly refer to cases in the books ; they are intended for the guidance of practitioners, not for the reading of students, and it would be folly in you to attempt so Sisyphean a labour as that of collating the cited cases with the original reports. Leave the foot-notes alone, and do not trouble yourself about the little letters of reference which stud every page of the text. You must read straight on to the end of the first paragraph in page 9 (I am paginating from the edition of 1863), and then call a halt, and review your acquisitions. Write out the different heads (thus, “contracts under seal,” “delivery as an escrow,” and so on) in the narrow margin of a sheet of foolscap : and then opposite each head write (from memory) your recollection of Chitty’s text. Next, correct

* We must remind the student that he has now the second and a portion of the third chapter to get up, which require most careful reading (Editor’s note).

this by help of the book itself; and finally write out your corrected *résumé* in your commonplace-book. This, altogether, should take you a day.

At the second paragraph of page 9 (where you recommence) and further on, you will notice several "cases," or decisions. Read these, and attempt to understand them: if you cannot reconcile one case with another, pass on to where the next "head" is indicated by the marginal note; and adopt this plan on all occasions whilst reading Chitty, when, after due reflection, you cannot comprehend the relative bearing of the cases cited by the author. Some of these cases a little further on appear, to a young student, very contradictory—varying with the different opinions of different judges; and, although the more advanced reader may perceive distinctions and shades of difference justifying such variances, still, for the purposes of your "Preliminary," it is not advisable for you to attempt any such analysis.

Reading steadily at the rate of nine or ten pages a day, supplemented every Saturday by a sort of recapitulation, as shown just now, the one hundred and six pages which it is necessary for you to read will take about ten days. You will then proceed in like manner with the second and third chapters, and if you repeat the process *de novo ab ovo*, during the last three months of this your second year, you will find (aided by a "brush up" just before the Intermediate itself) that Chitty, after all, presents less difficulties than you had anticipated at a first view.*

Between the first and second reading of Chitty (a period of about six months) you will find it much to your advantage to read Mr. Joshua Williams' book on *Personal Property* twice; the first time by itself, the second, side by

* As there is more reading now required for the Intermediate, the student must increase his work *pro rata* (Editor's note).

side with the same author's work on *Real Property*. The former book is not, on the whole, equal to its admirable predecessor (somehow or another these "continuations" seldom are); but this is owing, no doubt, in great measure to the smaller historical and antiquarian interest of the subject. Whilst lawyers and laymen alike unite in praise of Stephen's *Blackstone* and of Williams' *Real Property*, few *but* lawyers care to read Chitty, or Mr. Williams' second book. Still, if only on account of its standing quite by itself amongst elementary works, I consider that Williams on *Personal Property* demands a good share of your attention. There is no other book with which I am acquainted which treats in so *approachable* a manner of what may be called "*Quasi-Conveyancing*"—of bills of sale, copyright, shares and stocks; in a word, of personal property. Read it, therefore, and duly transfer it into your commonplace-book.

There is one branch of law to which I must now direct your attention, and to which you will have to apply yourself "with a will," when once your "Intermediate" is satisfactorily accomplished. I mean the Statute Law. You will have read in *Blackstone* that the body of English law is derived from three sources: first, the ancient common law of the realm; second, legislative enactment; third, the construction of the Courts of the subject-matter of the two former. The first of these divisions is known as "the Common Law," which has been from time to time greatly modified and restricted by the second—the "Statute Law;" and the third is called "Case Law." Of these three great subdivisions of law, the second is of highest importance. The Statute Law, commencing with the Act *De donis*, passed in the reign of Edward I., extends over upwards of five centuries, and is contained in many hundreds of ponderous volumes called "The Statutes at large." Of nearly 30,000 various Acts which, it has been computed, are comprised

in the statute book,* it may be stated that 20,000 have either been expressly repealed, or else have fallen into desuetude and are virtually obsolete. Of the 10,000 (speaking in round numbers) which remain, at least nine-tenths have been either passed for special or local purposes, or else refer to matters with which the legal profession has only indirectly or occasionally to do. Of the former description are Acts passed to enable public works (of various descriptions and at various places) to be carried on; of the latter, Acts authorizing the levy of taxes and the raising of subsidies, and those providing for special political matters, may be cited as examples. But, even when we have stripped the statute-book of all these enactments, foreign to the everyday practice of law, we still find some 800 or 1000 Acts, more or less important, and more or less frequently called into operation, but all of which are still in being; and with the majority of these it is necessary that the working lawyer should be tolerably well acquainted. These last-named Acts constitute what is generally alluded to as "the Statute Law," and are scattered in a large number of volumes, one of which is commonly published at the end of every session of Parliament. This 1000 or so of Acts may be subdivided into three classes; the first, those which are constantly quoted in the law-courts, continually resorted to in practice, and upon which the main structure of law rests. This class comprehends some hundred and fifty separate Acts; and I may as well tell you here that with every one of them you will have to become acquainted,—with some of them most *intimately* acquainted,—before you can be said to have even an average knowledge of the science you are about to practise. The second

* I am speaking from recollection only, but I believe that these figures are nearly correct.

There have, of course, been many more passed since this book was first written (Editor's note).

class embraces, perhaps, twice that number of Acts; they are, although not in constant requisition, still more or less important, and it is necessary that you should be acquainted with their titles and dates, at least for purposes of reference. The third class of Acts are those which, although still unrepealed, are only occasionally brought into operation on account of the exceptional and special nature of their subject-matter. With these it will hardly be expected that you should be familiar. Reverting to the first class of Acts, some forty or fifty can be selected from its ranks which are so incorporated in every text-book which the student comes across, so necessary to be mastered, almost at the commencement of a lawyer's studies, that it behoves me, writing in your interests as an articulated clerk, to draw your attention to them, and advise your gradual perusal of them during the time of your articles, beginning with your second year. As being more intimately connected with the subjects you have been already studying, I here append a list of nine of these statutes, comprehending matters specially treated of in the four volumes which I now presume you to have read (Mr. Williams' two works, the first volume of Stephen's *Blackstone*, and a portion of Chitty on *Contracts*). These statutes it is incumbent upon you to read without loss of time; and in the after portion of this book I shall assume that you *have* carefully read them, and shall only cite them by their dates whenever in future I may have occasion to allude to them. One evening a week specially devoted to statute law will be amply sufficient, during the ensuing twelve months, to make you acquainted with the Acts whose dates and titles are given on the next page.*

* The earlier Acts (marked *) can be learned, for the present, from Williams' *Real Property*, Chitty's *Contracts*, and Stephen's *Blackstone*. Those not so marked must be ordered through a law bookseller (they will only cost a few pence each) in separate sheets.

LIST OF STATUTES TO BE READ BY THE STUDENT DURING THE
SECOND YEAR OF HIS ARTICLES.

<i>Dates.</i>	<i>Titles.</i>
(1.) 27 Hen. VIII. c. 10.*	"The Statute of Uses."
(2.) 29 Car. II. c. 3.*	"The Statute of Frauds."
(3.) 3 & 4 Will. IV. c. 74.*	"Fines and Recoveries Act."
(4.) 3 & 4 Will. IV. c. 106.*	"Real Property Amendment Act."
(5.) 1 Vict. c. 26.	"Wills Act."
(6.) 8 & 9 Vict. c. 106.	"Real Property Amendment Act, 1845."
(7.) 13 & 14 Vict. c. 60.	"Trustee Act, 1850."
(8.) 19 & 20 Vict. c. 120.	"Leases and Sales of Settled Estates Act."
(9.) 22 & 23 Vict. c. 35.	"Trustees' Relief Act, 1859."

* See note preceding page.

There are many others mentioned in my Table of Statutes (published by Messrs. Butterworth) which the student could with advantage peruse, should time permit (Editor's note).

CHAPTER III.

THE THIRD YEAR.

PART I.

Different kinds of actions in the Common Law Divisions—Suggestions for acquiring a knowledge of the details of practice—*Nisi Prius* business—The brief and its preparation—Marshalling the evidence—General rules of evidence—A short practical view of the ordinary steps in different descriptions of actions, with examples.

THE practice of the common law (by which I do not now mean that immemorial usage of the realm called “common law” in contradistinction to the “statute law,” but rather those legal remedies administered by the Common Law Divisions of the High Court at Westminster, as distinguished from the “equitable” code adopted by the Chancery Division) formed, perhaps, the largest portion of the ordinary business of a solicitor’s office. There are in this country a far greater number of tradesmen than of private landed or funded proprietors; and inasmuch as the courts of common law were the tribunals to which nearly all commercial disputes (excepting those arising between partners, and also excepting such special matters as infringements of copyright and patent) were referred for adjudication, it necessarily follows that the amount of common-law business annually transacted must have been much larger than that growing out of conveyancing or equity. The common law courts, then, were the tribunals having jurisdiction over most matters of contract of which *personal* property was the subject-matter; and to these tribunals all persons suffering from a breach of contract of this nature finally appealed. Debt, breach of simple contract, and non-per-

formance of covenants entered into under the solemnity of a seal, were the three divisions into which this branch of injury naturally resolved itself; and you will accordingly find that the first great branch of common-law suits—actions *ex contractu*—was subdivided in that manner. *Debt* was the form of action usually resorted to when the recovery of a fixed sum of money due from one party to another was desired; *assumpsit*, when a breach of a simple contract (that is, of an engagement not under seal) had occurred; *covenant*, when a contract *under seal* had been broken. The courts of law did not profess to enforce *specific performance* of any contract; they only awarded *damages for the breach*: thus, even where a certain sum of money (*debt*) was adjudged due to a plaintiff, the Court gave it him by way of liquidated damages, and not by way of specific performance of the implied promise to pay; whilst, if the breach of a simple contract (*assumpsit*) or of an engagement under seal (*covenant*) was complained of, it is self-evident that the law, in awarding to the plaintiff a sum of money in respect of the nonfulfilment by the defendant of his legal promise, gave it as damages *in compensation* of the injury sustained. This distinction between damages, as awarded by the courts of common law, and specific performance, as decreed by the courts of equity, was an important one, and should be clearly apprehended by you, in order to arrive at a just estimate of the different ends formerly achieved by the means of common law and equity respectively.

But, besides breach of contract, the courts of law also professed to compensate personal injuries. And this gave rise to the second great class of common law suits—actions *ex delicto*, otherwise actions of *tort*. If any one man suffered an injury at the hands of another, it must necessarily have occurred that this injury was either occasioned by a breach of a contract, or else by a wrongful act (a *tort*)

committed *irrespective* of any special contract. Of the former class of cases I have already spoken; the latter was divided by the Courts into four divisions:* 1. Trespass; 2. Trespass on the Case; 3. Trover; 4. Detinue; and I must now briefly explain the object and effect of each of these kinds of actions *ex delicto*.

1. Trespass was the form of action where a man complained of a *direct* injury to his person or property. Thus, if A. assaulted B. (which was an injury to the person), B. had his remedy in an action of trespass. Again, if C. wrongfully intruded on D.'s land, D. had an action of trespass *quare clausum fregit*; that was, trespass by the "breaking of his (D.'s) close." In either case the action of trespass was resorted to, and the Court awarded damages for the injury.

2. Trespass on the case was the remedy in two classes of cases,—first, when the injury complained of was *indirect*, and secondly, when it was rather an injury done to the *reputation* than to the *person* or *property*. As an illustration of the first of these, supposing A. threw a log at the head of B., this would have been a *direct* injury to B.'s person, and therefore *trespass* would have been the form of action; but on the other hand, suppose A. threw the log (having no right to do so) at a time when B. was not passing, and afterwards B. came up in the dark and broke his leg stumbling over it,—here the injury was *indirect*, and *trespass on the case* would have been the form of action to be employed.† As an example of the second kind of injury—damage done to the reputation—remedied by an action "on the case," I may instance: (1.) Libel, where defamatory writings or drawings were published by one person against another; (2.) Slander, when the defamatory matter

* The exceptional or *irregular* actions of ejectment, replevin, dower, and *quare impedit* are noticed later.

† This example is borrowed from Mr. Smith's *Action at Law*.

was *spoken* instead of written; (3.) Seduction, which was in form an action on the case brought by the employer of a girl to recover damages for the injury done to him by the non-efficiency of his servant;* and (4.) Malicious prosecution, when one person had causelessly and maliciously prosecuted another in a criminal court. A fifth kind of action—breach of promise of marriage—which, at first sight, might appear to belong to this class, was ranged by the law under the head of actions *ex contractu*, and was brought in the form of *assumpsit*, for breach of the contract to marry. The action “on the case” was not confined to the instances named above, but was the usual remedy afforded by the common law where an injury is complained of which did not in form fall within any other class of action. In every one of these actions of trespass on the case the Courts followed their usual principle of compensation, and awarded a pecuniary *solatium*, in the shape of damages, to the aggrieved party.

3. Trover. This action was confined within somewhat narrow limits, and was in form brought to recover damages for the finding and wrongful conversion of property. It was the usual form of action in which carriers were sued when goods were lost in transit, or delivered by them to the wrong party.

4. The action of *detinue* was somewhat akin to trover, and was generally brought when a party who had come into lawful possession of property for a stated purpose or time, detained it after the purpose has been fulfilled, or the time has expired. It differed from trover in two particulars: first, in suing for it the property sought to be recovered must have been described with great particularity in the plaintiff’s first pleading (the declaration); secondly,

* The law does not recognize any *moral* right in either the girl or her father (as such): it professes only to give damages for the *civil* injury, not to punish the wrongdoer.

the Court in that instance departed from its usual course, and ordered the *specific restitution* of the article detained, in addition to damages for the detention. This was not the case with trover, where the verdict, awarding damages to the plaintiff, vested the subject-matter of the action in the defendant, as soon as he had paid those damages.*

Besides these two regular divisions of common-law actions, into actions *ex contractu*, and actions *ex delicto*, there was a third irregular class of actions, brought for special purposes under statutory provisions. The first action of this class was *ejectment*, which was brought to recover the possession of *real* property, and which was the only form of action in use for that purpose. Ejectment was of two kinds: first, that brought by the alleged rightful owner of the fee (or estate tail, or life estate, as the case might be) against another who was in alleged wrongful possession of the land; second, that brought by a landlord against his tenant, when the latter continued in possession after his tenancy had legally determined, by notice or otherwise. It was to be observed, in reference to this, that if a landlord let property for years to a tenant, and continued, against the terms of the lease, in possession of the property, the tenant had no remedy by ejectment (which could only be brought by the owner of the inheritance, or life estate), but must have resorted either to covenant, or trespass, according to circumstances. The action of ejectment was a very important one, and very complicated questions of title, descent, &c. frequently arose in the course of proceedings. It had one great peculiarity, there were no pleadings, the writ in that action containing a full description of the property sought to be recovered, after service of

* The student must remember that there is now no classified forms of action under the Judicature Acts (Editor's note).

which the issue is at once made up.* A second exceptional action was that of *replevin*, which is brought by the owner of goods wrongfully taken by distress. This was altogether an anomalous kind of suit; the proceedings commenced in the district County Court, and the subsequent pleadings entirely differed from those employed in any other action. I should here mention that *replevin* could only be brought for a *wrongful* distress; if what was complained of was that the distress is *excessive* only, the remedy was by an action on the case, under an old act known as the "Statute of Marlbridge."† The other two actions, *dower* and *quare impedit*, were of the class formerly called "real actions," most of which were abolished in the year 1833; but as since 1860 they commenced with an ordinary writ of summons, issuing out of the Court of Common Pleas *only*, they have lost much of their exceptional character. The former of these actions was brought by the widow against the heir to recover her dower, or third of her late husband's *real* property undisposed of at his death; the latter was resorted to by the presentee of a benefice when the bishop refused to confirm by ordination the presentation of the clerk's patron. Both these last-named actions were of very rare occurrence.‡

Having thus glanced at the characteristics of the different kinds of actions, I would now offer you a few brief and general suggestions as to the mode in which you should acquire a knowledge of common-law practice. As I have already informed you at some length in the first chapter of this book, the action in every case (excepting *replevin*) commenced with a "writ of summons," which

* An action for recovery of land has been now substituted for the writ of ejectment, and the writ and pleadings are now the same as in ordinary actions (Editor's note).

† The writ and pleadings in an action of *replevin* are now similar to those in ordinary actions (Editor's note).

‡ But under the Judicature Acts the jurisdiction of the Court of Common Pleas is in these actions transferred to the Common Pleas Division of the High Court (Editor's note).

was issued out of the office of the court in London. This writ may be issued at any time, in or out of term. There were four descriptions of writs of summons: first, that brought for a specific sum due, the particulars of which are "indorsed" on the writ: thus, if A. owe B. 30*l.* on an account, an "indorsed" writ would have been issued. The second kind of writ was, where the damages sought to be recovered were unliquidated: thus, if C. brought an action for breach of promise against D., the damages were laid at some large nominal sum (1,000*l.* for instance), and the proceedings commenced with a plain or unindorsed writ of summons. The writ in use in ejectment was a third and very peculiar class of instrument: there being formerly no pleadings in this action, the writ served at once the purpose of a *summons* and of a *declaration*, the property sought to be recovered was fully described, and the defendant, by appearing, impliedly pleaded the "general issue"—that was, denied the plaintiff's right to the possession of the property.* There was a fourth writ, issued under the provisions of "The Bills of Exchange Act," passed in 1855; in this case the indorsement was a copy of the bill itself, and the defendant was not allowed to delay the subsequent proceedings by any pleadings, unless let in on affidavit showing that he had a "good defence on the merits"—as a set-off, payment, want of notice (if an indorser or drawer), fraud, or forgery.† The writ (whatever its kind) having been served, as shown in the first chapter, the pleadings take place in due order, as before detailed. These pleadings are drawn up in the offices of the solicitors engaged, except where the matter is very complicated and exceptional, when they are settled or drawn by counsel. I should therefore advise you, whenever an action is depending in

* Now the writ and pleadings, as before mentioned, are the same as in other actions.

† By Order II., Rule 6, of the Judicature Act, 1875, the procedure under the Bills of Exchange Acts still continues to be used as far as the writs and appearance are concerned (Editor's note).

your principal's office, not only to carefully read the pleadings exchanged between the solicitors, from time to time, but to take notes of the proceedings in a little book to be kept for the purpose—something after this manner :

<i>Action.</i>	<i>Pleading.</i>	<i>Its effect.</i>	<i>When delivered.</i>	<i>When and to whom next pleading to be delivered.</i>
Morris	Statement	Setting up	a May 1,	Within 21 days,
v.	of	release of one	1868.	i.e. on or before
Hepburn.	defence.	part of the		May 22nd, to
		claim, and a		the plaintiff's
		set-off against		solicitor, Mr.
		the other.		Smith.

Keep a separate page of this book for each action passing through the office; and, at the time of making a new entry, collate it with the one immediately preceding. This process cannot fail to make you familiar, not only with the form in which pleadings are framed, but also with the kinds of defence ordinarily set up in different actions. I cannot spare space here to enter upon any detailed explanation of the rules of pleading,* but will only here say, that the declaration consisted of one or more "counts" or charges, to each of which "counts" the defendant in reply pleaded a separate plea. The rules of pleading did not allow two pleas to the same count without first obtaining leave of a judge at Chambers (in London) by means of a "Summons to plead several matters." To this rule there was, however, an exception in the case of some fourteen or fifteen ordinary pleas (such as "infancy," "coverture," "release," "set-off," &c.) which might have been pleaded together without such leave.† Attentively note, from time to time, the course adopted in the actual pleadings which pass through your

* This subject will be treated of later (see Chap. V.).

† As before mentioned, the statement of claim has now taken the place of the declaration, and the statement of defence that of the plea (Editor's note).

office, and try to ascertain the reasons suggesting one course being pursued preferably to another.

Besides the perusal of the different pleadings, and the system of written notes which I have recommended, the advice given you in a former part of this book, as to reading all the letters passing between your principal and his town agents (as to the issue of writs, their service, the pleadings, entering for trial, &c., as well as the subsequent signing, judgment, taxation of costs, and issuing writs of *fi. fa.*, enforcing the judgment of the Court), should be followed strictly from one day to another.

The bills of costs must also be perused. An action at common law is ordinarily liable to fewer incidental interruptions than an action in the Chancery Division, or even a matter of conveyancing; consequently the proceedings follow in pretty regular succession in the bill of costs subsequently made up and delivered. Although a bill of costs may seem dry reading enough to you, who are gladdened by no prospective vision of profits arising therefrom, still you will find one of these uninviting documents will give a better "bird's-eye view," as it were, of the routine of an action than any treatise or dissertation that ever was published.

If your principal will permit you to do so, I should recommend that you occasionally look at his diary, containing anticipatory and prospective notes of steps to be from time to time taken in different matters of business. Whether you are allowed to do this or not, however, the Day-book is, at all events, open to you; and as this book contains a day-by-day record of every professional matter transacted in the office, you will find its aid most valuable.

Assuming you to have been articled in the country, the only practical experience of a common-law action attainable by you previously to going up to your principal's town agents, is afforded by the proceedings at *Nisi Prius*, at

the assizes held in your town. These assizes are progresses made by the judges (twice a year; once during the period between the end of Hilary and the commencement of Easter sittings, and once during the Long Vacation) for a double purpose, namely, that of trying criminals at the assize town of the district in which the offence was committed, and also that of supplying, in some degree, the place of local superior courts of civil jurisdiction.

At these assizes all criminal cases not triable at Quarter Sessions (embracing the more serious class of felonies) and all civil cases involving interests too large to be adjudicated upon by the County Courts, are tried before two of her Majesty's judges (selected indiscriminately from the High Court), one of whom sits on the "Crown side" of the Court, and presides at the criminal trials there taking place, and the other of whom sits on the "civil side" and "takes pleas." These Courts are opened on a fixed day by "commission," which "commission" authorizes the judges named to hear causes, whether originating in the particular Court or Courts of which they are members, or in one of the other Courts. For a full account of the origin of "Nisi Prius" sittings, as well as of the peculiar functions of the judges and officers of the Court, I must refer you to a book which you should commence reading immediately after your intermediate examination is happily accomplished—Smith's *Action at Law*.

When a solicitor acting for the plaintiff is desirous that his client's cause should be tried at a particular assize, he, in the first place, takes care that the joinder of issue occurs in time to allow of the cause being entered at that assize. Immediately issue is so joined (by the one party directly contradicting the last pleading of his adversary) a copy of the pleadings, called "the issue" is made by the plaintiff's solicitor, and notice of trial forwarded by him to the solicitor on the other side. The "record," so-called because it was

the official *record* of the pleadings, was then made up by the plaintiff's attorney; now, instead, two copies of the pleadings are brought into Court when the case is called on; and one is the only document to which the judge may look to see whether the evidence offered is in accordance with the issues raised by the pleadings. After the issue is made up, and the plaintiff's solicitor has given a written "notice of trial" to the other side, which must be done at least ten clear days before the "commission day," should he afterwards wish, for any reason, to delay the hearing of the trial after giving this notice, he has to give a second notice (called "countermand notice of trial") to the defendant's solicitor, which can only be done with leave or by consent of parties before the commission is opened.

These proceedings having been taken, the brief prepared, and the witness *subpœnaed*, nothing more can be done until Commission-day, when the senior judge (having entered the town, escorted by the mayor and sheriff, and having heard afternoon service at the cathedral church, if it be a cathedral city) attends at the building wherein the assizes are to be held, when her Majesty's commission is read aloud by the proper officer. Immediately after this has been done, the plaintiff's solicitor attends at the office appointed for the purpose, enters his cause for hearing, and bespeaks a special jury, if necessary. He then seeks out the lodgings of the counsel whom he has selected for conducting his cause, delivers the brief, which he has previously prepared, to their clerks, and appoints a time for the consultation. This consultation having duly taken place, and the solicitors in the action having seen that their respective witnesses are in readiness, all parties fold their hands and await the hearing of the cause.

I must now go back to the brief, which, as you have just seen, is delivered by the solicitor of each party to the counsel employed by him to advocate the cause, imme-

diately after the opening of the commission. The brief is divided into three parts: 1. A transcript of the pleadings in their order, which it is evident will exactly correspond with the record laid before the judge; 2. A statement of the facts of the case; 3. A sort of abstract or *résumé* of the evidence of the witnesses produced in support of that case.

The preparation of this brief is, of course, the province of the solicitor, and its satisfactory "drafting" requires not merely a good knowledge of the law bearing on the particular case, but also a logical method and a terse and clear literary style. There is no mistaking a well drawn brief. Unlike a conveyance, the practitioner has little aid from precedents, and is obliged to fall back on his own ideas; and consequently the brief when completed bears the impress of the solicitor's mind. In the hurry of *nisi prius* business, counsel are often compelled almost entirely to rely on the foresight and acumen of the solicitor, and on the correctness, in law as well as in fact, of the instructions conveyed to them by his brief; and a hastily or crudely prepared brief may easily have the effect of losing a case, especially when the matter in dispute is one of fact rather than of contested law. The manner in which a brief is prepared may thus be summarised:—

1. The client states the facts to his solicitor, who notes them down carefully, and then thoroughly considers any questions of law which may be involved. Having come to the conclusion that the case is ripe for trial (if he be for the defendant, however, he of course has no option in the matter), he next—

2. Appoints to see the necessary witnesses, takes down the evidence each one is prepared to offer, and directs his (the witness's) attention to the points upon which clear and conclusive testimony is specially required from him.

3. The solicitor then goes over these notes of the evidence carefully with the pleadings, expunges whatever is

clearly irrelevant to the issue, and (if necessary) makes note of any further matters needful to be brought before the Court. He also ascertains what documentary evidence will be required, and takes the proper steps to insure its production.

4. From the minutes of evidence as finally settled he draws out the case, stating every point in its logical order, and directing counsel's attention to the facts to be especially dwelt upon in addressing the jury. Any questions of law which may be involved he also notices at length, and gives references to any cases bearing out his view of the matter, which cases he must take care to be prepared with in Court when the cause comes on for hearing.

5. The case having been thus drawn, and compared once again with the evidence and the pleadings, the pleadings, case, and evidence are arranged in due order, fair-copied by a clerk on brief-paper, and finally delivered to the counsel selected to conduct the cause.

No detailed observations on the shape the case should assume and the evidence necessary to bear it out, can possibly be given in this place. In these respects it is sufficiently evident that every individual case depends upon its own merits. But I here append a few of the more general rules of law governing evidence, in illustration of this branch of my subject, and as a preparation for your perusal of some more complete work treating thereof.

The first great rule is, that "the best possible evidence should be produced." From a common-sense point of view, if A. were to assault B., and C. was present at the time, C.'s corroborative evidence would be the "best producible;" and, in the unexplained absence of C., the evidence of D., whom B. immediately afterwards informed of the occurrence in A.'s presence, would be open to objection. But the rule has really a more technical and restricted operation than this, and is, in practice, almost entirely confined to

documentary evidence. As an instance: A., a plaintiff, desires to produce in evidence a deed, the *original* of which is in the custody of B., the defendant, but of which A. possesses a *copy*. Now, as it is incumbent upon A. to produce *the best possible evidence* of this deed, it is evident that he must produce the deed itself, if available, in preference to the copy. If, after giving B. a "notice to produce" the original, B. declines or neglects to do so, A. can then fall back upon the copy, which will be admissible as *secondary evidence*.

Another fundamental rule is, that "hearsay evidence is not admissible." By "hearsay evidence" is not *necessarily* meant "anything that is heard:" for instance, if A. verbally agrees with B. to do a certain thing, and C. is present and *hears* the agreement, C. is perfectly competent to testify thereto. Again, if A. assaults B., and B. calls out "murder"! and C. hears it, there is no earthly reason why C.'s evidence on this point should not be allowed. What is meant by "hearsay evidence" is the narration of a past event by one person to another: and it is to the rejection of rumours of this kind that this rule is directed. For instance, if A. offers B. 50*l.* to settle an action, and B. goes away and afterwards informs C. of the fact, now C. cannot be put in the witness-box to say that B. told him (C.) that A. had offered him 50*l.* to settle the action. This is "hearsay evidence," and cannot be admitted. If, however, A. had been present when B. so informed C., and A. did not by word or gesture dissent from the narration, it would cease to be "hearsay evidence" (A. converting it into positive evidence by his implied assent), and would be admissible.

Another rule affects the competency of witnesses (and perhaps, properly, I ought to have stated this first). Before anyone can be admitted to give evidence in a court of law, the Court must be satisfied that he or she is of competent age and understanding. A very young child—three or four years old—would obviously in no case be admissible

as a witness ; for it is, by its tender age, quite incapable of understanding the matter, or even the questions addressed to it. Whether a child is or is not a competent witness after those first tender years are passed depends in every instance upon the intelligence of the child and its comprehending the consequences of saying what is not true. The same reason that forbids the reception of a very young child's evidence—lack of understanding—applies with even greater force to lunatics and idiots ; and these are consequently ineligible as witnesses. Another class of persons incapable of giving evidence are those who neither believe in a God, in a future state, nor in any punishment here or hereafter attending those who deliberately bear false witness. It is evident that upon so thorough an atheist as this—one who fears nothing, dreads nothing, and acknowledges no superior—the Court can have no hold ; and his evidence therefore is rejected. Formerly the rule as to religious belief was very stringent, but it has been latterly much modified ; and now every person who believes that he will be punished supernaturally (that is, by any other means than those possessed by man) if he lies, is an admissible witness ; and it is enacted by 32 & 33 Vict. c. 68, that if a witness, either in civil or criminal cases objects to take an oath, or is objected to as incompetent to take an oath, he may, by leave of the presiding judge, give evidence on declaration, and be liable to the penalties of perjury for false evidence. These are the only incompetent persons ; except in two special cases presently to be noticed. Formerly criminals, aliens, married women, and a still larger class of “interested parties” (the litigants themselves—plaintiffs and defendants) laboured under partial or entire disabilities ; but this was altered by the “Evidence Act, 1851”—one of the many admirable legal reforms which the country owes to Lord Brougham ; and all these classes of persons are now eligible witnesses. The two exceptions to

which I refer were in the cases of breach of promise of marriage and divorce. In the former of these cases, neither the plaintiff nor defendant could have been called as witnesses; in the latter, neither husband nor wife was allowed to give evidence of the other's adultery. But by 32 & 33 Vict. c. 68, above alluded to, either party to an action for breach of promise of marriage shall be competent and compellable to give evidence in such action; and in cases of adultery the husbands and wives are competent witnesses, but are not bound to criminate themselves unless either of them shall have previously given evidence in disproof of his or her alleged adultery.

Another important rule of evidence is, that no disclosure is allowed to be made of affairs of state, nor of matters which it would be impolitic to make publicly known. A branch of this rule is that which provides against the enforced disclosure of matters imparted in professional confidence. This rule at present only extends to the cases of solicitors and counsel, neither of whom can be examined upon matters communicated to them professionally by their clients.* Clergymen and medical men are shielded by no such privilege; and although this may be in exceptional cases matter for regret, still there can be little doubt but that, generally speaking, the interests of the public are best served by this enforced disclosure of professional confidence.

I must now refer back to the rule against "hearsay evidence," for the purpose of informing you of some of the principal exceptions to it. These, when examined, will be all found to rest on one ground—namely, the impossibility of procuring other evidence upon the particular point. Thus, it is expedient that questions of pedigree,

* This rule does not, however, extend to protect the solicitor where actual *fraud* is attributed to him in the conduct of the matter; and this whether at law or in equity.

legitimacy, &c., &c., should be allowed to be established by means of hearsay evidence, because it generally happens that no other is procurable; and, consequently, not only entries in family bibles, inscriptions, tombstones, &c., are admissible in this class of cases, but even the conversation of deceased parents and friends, relative to such matters as birth, marriage, baptism, christening, death, and burial, are received in evidence by the Courts. Again, it is now an established rule that entries made in the ordinary course of business by the person who should by right make them are good evidence, even although the person making such entries, being examined, profess his inability to state more concerning them than that they were made by him at the time, in the ordinary and regular course of business. And entries made by deceased persons are admissible in proof even of *collateral* circumstances, if such entries be *against the interest of the person making them*. There is one very curious instance of this in the books, where a surgeon entered in his ledger a charge for attending a lady in child-birth, opposite to which charge he put the word "paid;" this acknowledgment was held to make the entry one "against the interest of the party making it," and the entry was accordingly received as evidence of the date of birth of the child, and its consequent legitimacy.* Another exception to the rule is in relation to matters of *public* notoriety, of which every member of the community must be taken to be informed; and a further exception is made in matters of *local* notoriety—such as the existence or non-existence in times past of rights of way, or water, boundary-stones, or ancient lights—which matters constantly let in the hearsay testimony of that interesting creature, the "oldest inhabitant." The last great exception to the

* *Higham v. Ridgway*, 2 Smith, L. C. 183. See also *Price v. Torrington*, 1 Smith, L. C. 139—(Editor's note).

rule provides for the admissibility of declarations made in sick-beds by persons *in articulo mortis*.

Such are a few examples of the rules affecting evidence. The subject itself is far too large for me to attempt here anything like an exposition of its principles. For that purpose I shall refer you hereafter to the admirable and luminous works of Mr. Taylor and Mr. Powell.

I will conclude this branch of my subject with a practical outline of the proceedings in four different species of actions—the first, under the Bills of Exchange Act, 1855; the second, an action for debt (indorsed writ); the third, an action for damages (un-indorsed writ); and the fourth, an action of ejectment.* I shall further clothe the outlines of each suit with imaginary details; and thus endeavour to make the foregoing observations more fully intelligible to you:—

CASE I.

TAYLOR *v.* OSBORNE.

TAYLOR *v.* MINTON.

Mr. Taylor, a London wholesale jeweller, is in the habit of sending a traveller to solicit orders on his behalf from retail dealers trading in the country. His traveller on one occasion calls upon a shopkeeper named Osborne, residing at Devizes, and the latter orders jewellery of the value of 36*l.* The traveller tells him that his principal's terms of dealing are—a three months' bill, which, in the case of a new customer, must be "backed" (*i.e.* indorsed) by another party. Osborne represents that it would be more convenient to him if the amount could be divided into two bills for 18*l.* each, one drawn at two and the other at four months: these terms are finally agreed on, and another

* Strictly now called an action for recovery of land (Editor's note).

tradesman named Minton indorses both bills,—of which the following are copies :

(No. 1.)

£18 0 0

London, May 1st, 1876.

Two months after date pay to me or my order Eighteen pounds (value received).

JAMES TAYLOR.

Mr. OSWALD OSBORNE

Jeweller, Devizes.

Indorsed "Alfred Minton."

(No. 2.)

£18 0 0

London, May 1st, 1876.

Four months after date pay to me or my order Eighteen pounds (value received).

JAMES TAYLOR.

Mr. OSWALD OSBORNE

Jeweller, Devizes.

Indorsed "Alfred Minton."

N.B.—Taylor (the drawer) sends the bills by post to Osborne, who accepts them (thereby becoming the acceptor), and Minton indorses them (thereby becoming the indorser); the bills are then sent back to Taylor, who is now the indorsee.

On July 1st the first bill becomes due; the three "days of grace" allowed on every inland bill having expired, Taylor (through his agent at Devizes) *presents* it for payment at the Wiltshire and Gloucester Bank: no money of Osborne's, however, is forthcoming; the bill is *dishonoured*,—"no effects" written upon it—and returned to Taylor. The latter immediately gives written "notice of dishonour" to Minton, the indorser, and takes the bill to his solicitor, who says, "You cannot sue upon it except in a County Court; the bill is for less than 20*l.*, and, consequently, under the County Courts Act, 1867, you have no remedy in the superior courts." "Oh!" says Taylor, "but I have

another bill of the same amount, with the same drawer and indorser, coming due on September 1st." "That will do," replies his solicitor, "as the second bill will be due within six months* of the first, there is nothing to prevent your coupling them in one writ, under the Bills of Exchange Act, as soon as the second bill is dishonoured." Upon this Taylor goes away. In due course the second bill becomes due, is presented, dishonoured, and notice of dishonour given to Minton. Taylor then goes again to his adviser, who asks how much interest is due on the bills (for bills of exchange as against the acceptor always carry interest from the day they arrive at maturity, and as against the indorser from the time notice of dishonour is given), and then says, "As from your account Osborne seems shaky, you had better issue two writs—one against the acceptor, and one against the indorser; and this you have still the right to do.† So the matter is settled, and two writs issued in the Queen's Bench Division (any one of the other divisions would have done),‡ one against Osborne, the other against Minton. The indorsement gives a copy of the bills, and states the interest already due, and the costs. Taylor's solicitor sends down the two writs for service by his correspondent at Devizes. Upon this, Osborne and Minton go together and consult their adviser, whose first questions are, "Were the bills for value? was proper notice of dishonour given in each case? and are the signatures your genuine handwritings?" All these questions being answered in the affirmative, the solicitor says, "Then you must pay the money at once, Mr. Osborne." Osborne says, "It isn't convenient to do so for

* An action under the "Bill of Exchange Act" must be commenced within six months of the bill becoming due.

† The acceptor and the indorser might have been included in the same writ, subsequent proceedings being taken, however, as if separate writs had been issued (Editor's note).

‡ The writ might have of course issued out of the district registry (Editor's note).

a couple of months; can't I delay Taylor by putting in a plea?" "No," says the solicitor; "unless your defence is fraud or forgery, payment or set-off, you are not allowed, in an action of this kind, to put in a plea at all. When were you served?" "On the 10th September," replies Osborne. "Well, then, unless you pay the money within twelve days—that is, on or before the 22nd—there will be an execution against one of you." Upon this Osborne consults with Minton, who then asks, "If I pay the money, will that do?" "Yes," says the solicitor, "and both actions will then at once be stopped." The affair is then arranged by Minton paying the 36*l.* with interest and costs, and in return Osborne gives Minton *his* bill at three months for the amount. Thus the matter is finally settled.

Here is an outline of the proceedings:—

<i>Date.</i>	<i>Proceedings.</i>
May 1st.	Taylor draws, Osborne accepts, and Minton indorses, two bills for 18 <i>l.</i> each, at two and four months.
July 4th.	The three days of grace having elapsed, the first bill is presented and dishonoured.
Same day.	Notice of dishonour is given to Minton.
September 4th.	The second bill is presented and dishonoured, and notice of dishonour given to Minton.
September 6th.	Taylor's solicitor issues two twelve-day writs under the B. of E. Act,—one against the acceptor and one against the indorser, and sends them for service to his country correspondent.

<i>Date.</i>	<i>Proceedings.</i>
September 10th.	The writs are served.
September 12th.	Memorandum of service indorsed on writs by process-server, and writs returned to Taylor's solicitor.*

N.B.—If Osborne and Minton had not thus settled the action, Taylor's solicitor's correspondent would have sent an "affidavit of service," and on the 23rd September judgment would have been signed by Taylor's solicitor, the costs taxed, and a writ of *fi. fa.* issued—either against Osborne or Minton at Taylor's discretion.

After going thus far, I would advise you to read once again, very attentively, the chapter on bills of exchange in Mr. Joshua Williams' work on *Personal Property*.

CASE II.

HUDSON *v.* ALLINGHAM.

This is an action for goods delivered.

On the 1st February, 1876, a Mr. Brownsmith called on Mr. Hudson, a farmer, residing near Banbury, and said that he had a commission from London to buy some new red wheat, and inquired whether he (Hudson) had any for sale, and at what price. Hudson had at that time a large quantity of this description of grain, and after some bargaining, it was arranged that he should sell a quantity of wheat at the rate of 73s. per 36 stone, amounting altogether to 185*l.* Duplicate agreements were immediately drawn up on sixpenny stamps, and Brownsmith then disclosed the defendant Allingham as his principal, and the

* It must be remembered that by Order II., Rule 6, under the Judicature Acts, that the practice under the Bills of Exchange Act is still continued to be used, so far as the writ is concerned, by the Supreme Court with reference to bills not more than six months overdue (Editor's note).

contract was made out in Allingham's name, Brownsmith signing *per procuration*. It was arranged in this agreement that the wheat should be sent to Brownsmith on the 10th of the month, and deposited in his warehouse,—Brownsmith showing Hudson a written general authority for these purposes, signed by Allingham, and dated May, 1876. This was accordingly done a day or two later; and on the question of payment being raised, Brownsmith said that he had communicated with Allingham, and that it was all right, and the money should be paid, according to the custom of the trade, at the end of thirty days from delivery. In the meanwhile wheat went down in price 2s. 6d. per 36 stone; and at the end of the thirty days Hudson received from Brownsmith, instead of the money, a note stating that Allingham repudiated the transaction, and denied his (Brownsmith's) right to contract for him, and requesting that the wheat should be placed to his (Brownsmith's) account, instead of to Allingham's. This Hudson objected to do; and, on making further inquiries, it appeared that on the 15th February, Allingham had written to a carrier at Banbury, directing him to convey the wheat on the 24th from that place to the Great Western Station at Paddington, and from thence to his (Allingham's) stores, near Mark-lane, and the carrier communicated this to Brownsmith. On the 21st, however (after the fall in the price), Allingham wrote again to the carrier, countermanding this order. On learning these circumstances, Hudson consulted his solicitor, who advised him to sue Allingham. An indorsed writ was accordingly issued on the 9th March, out of the Common Pleas Division,* by Hudson's solicitor's agent, and duly served on the following day by the latter on Allingham. The indorsement bore the particulars of the

* This writ might have issued in the district registry (Editor's note).

plaintiff's claim for the 185*l*. Hudson's solicitor had expected that Allingham would not have appeared, in which case, *as the particulars were indorsed on the writ*, his agent could have entered judgment for want of appearance, and issued execution immediately (*viz.* eight days being allowed for Allingham's appearance, on the ninth judgment, taxation and execution might have been obtained); but Allingham appeared and defended the action in due course. Upon this it became necessary to prepare a statement of claim.* The *venue* was laid in Oxfordshire, and the statement of claim contained two causes of action,—the first the special contract made with Brownsmith, as the defendant's agent; the second being merely the old "common count" for "goods sold and delivered"—stating that the plaintiff sued the defendant "for money payable by the defendant to the plaintiff for goods sold and delivered by the plaintiff to the defendant." This statement of claim was delivered by the plaintiff's solicitor's agent to the defendant's solicitor (who had previously "appeared" for him). Within the eight days the defendant's solicitor pleaded in his statement of defence to the first paragraph in the statement of claim, that Brownsmith had no authority from him to enter into the special agreement declared upon, and also that the contract was against the usage of trade; and to the second paragraph pleaded a set-off. Within the time limited (*viz.* three weeks) the plaintiff *replied*, "taking issue" upon both the defendant's pleas, and thereupon issue was joined. An attempt made by the defendant (at Chambers) to change the *venue* to Middlesex failed, on the plaintiff showing (by affidavit) that all the witnesses resided in Oxfordshire. The usual proceedings ensued: the

* As the writ, again, was specially indorsed, a notice might have been delivered, referring the defendant to the indorsement, or, again, the plaintiff might have proceeded under Order XIV., Rule 1 (Editor's note).

issue was made up, notice of trial given, briefs prepared, witnesses subpoenaed, and the cause entered for trial at the Oxford Summer Assizes, the copies of the pleadings being handed to the proper officer. At the trial the evidence adduced by the plaintiff was as follows:—

1. The duplicate agreement signed by Allingham *per pro.* Brownsmith;
2. Proof of the delivery of the wheat to Brownsmith at his warehouse;
3. Plaintiff having subpoenaed Brownsmith, and given him “notice to produce” Allingham’s general authority, that document was produced by Brownsmith, who had to admit the facts above detailed.
4. The Banbury carrier proved the order (afterwards countermanded) by Allingham, as proof of the actual adoption by the latter of his agent’s transaction (although this evidence was not, strictly speaking, necessary). For the defence (the second plea having been abandoned) the defendant proved that in July, 1865, he had specially limited Brownsmith’s authority to purchases under the value of 50*l.*—all contracts over that amount to be submitted to him for ratification. The judge thereupon directed the jury that, even leaving the evidence of the defendant’s adoption of the contract out of the question, the general written authority given by the defendant to Brownsmith could not be subsequently varied by *parol* to the prejudice of the plaintiff, he not being privy to such alteration. Acting upon this direction, the jury found a verdict for the plaintiff for 185*l.* The defendant’s counsel immediately applied to the judge for execution to be delayed; but there being no special reasons, and the application being opposed, no order was made. The associate’s certificate was then obtained, and judgment was accordingly entered in London by the town agent, the plaintiff’s solicitor’s costs taxed, as between party and party, by the taxing-master of the Common Pleas, and a writ of *fi. fa.* issued against the goods of the defendant for

the amount of damages (185*l.*) and costs, which were ultimately paid by the defendant on the execution being withdrawn.

SUMMARY.—HUDSON *v.* ALLINGHAM.

<i>Date.</i>	<i>Proceedings.</i>
March 9th.	Indorsed writ issued.
„ 10th.	Defendant is served.
„ 18th.	Defendant appears (within eight days).
„ 23rd.	Statement of claim delivered to defendant's solicitor.
„ 31st.	Statement of defence delivered to plaintiff's solicitor.
April 7th.	Plaintiff replies, joining issue.
„ 10th.	The issue made up.
„ 12th.	Summons to change the <i>venue</i> (no order made).
July 9th.	Ten days' notice of trial given. [The briefs are then prepared, two copies of the issue are made up, and the witnesses subpoenaed.]
„ 20th.	Commission-day—cause entered for trial, and the two copies of the issue lodged with the proper officer; briefs delivered to counsel, and consultation takes place.
„ 23rd.	Cause comes on for trial—verdict for plaintiff for amount claimed.
August 7th.	Judgment entered, costs taxed, and <i>fi. fa.</i> issued.

CASE III.

ROBINSON *v.* — RAILWAY COMPANY.

Action of trespass, for unliquidated damages.

A Mr. Jones, in February 1868, was travelling on the defendants' line. Owing to some negligence on the part of the servants of the company, whilst stopping at an intermediate station, the coupling-irons attached to the carriage in which Mr. Jones was seated were taken away, and the carriage (which was the furthest from the engine) was left at the station when the train again started. Before the porters had time to shunt the carriage the through-express came up, cutting right through it, and killing Mr. Jones on the spot. Mr. Jones left a will, in which the plaintiff, Mr. Robinson, was named executor; and as, under an act known as Lord Campbell's Act, the executor is empowered to commence an action against the party through whom the death ensued within twelve months of the occurrence,* Robinson accordingly issued an undorsed writ in the Court of Exchequer on the 10th May following, claiming the nominal sum of 20,000*l.* as damages. This writ was duly served on the proper officer of the company; and the latter, feeling that they could not resist the claim in itself, and that the amount of damages was the only real question in the case, determined to allow judgment to go by default, in order that a writ of inquiry might be issued, and the damages assessed before the Sheriff. They accordingly did not enter an appearance to the writ; an interlocutory judgment was signed by the plaintiff after eight days,

* If the executor had delayed doing so for six months, the beneficiaries under the will might themselves have brought the action (27 & 28 Vict. c. 95) (Editor's note).

in the office of the Exchequer division,* and in due course a writ of inquiry issued, directed to the Sheriff of Middlesex (Mr. Jones having resided in London); and the plaintiff having caused a special jury to be summoned, the cause came on for hearing before the Under-Sheriff and a special jury in July following. Under Lord Campbell's Act, the jury, in assessing the damages, are also to inquire what relatives the deceased left surviving, and apportion the sum awarded between them; and it was proved at the inquiry that Mr. Jones had left a widow, a grown-up son, and three young children. It was further proved by the plaintiff that Mr. Jones had been, up to the time of his death, in receipt of an income of 500*l.* a year, and had left but a very small provision for his family. Upon these facts the jury estimated the damage at 4,000*l.*; of which they awarded 2,000*l.* to the widow, 600*l.* each to the three infant children, and 200*l.* to the grown-up son. The defendants had previously offered to settle the matter for 2,000*l.*, and they had paid that sum into court; but the jury finding beyond that amount, all the costs fell on the company. Execution might have been issued in the ordinary way,† but the defendants paid the damages and taxed costs, immediately on final judgment being signed.

SUMMARY.—ROBINSON *v.* — RAILWAY COMPANY.

Date.

Proceedings.

May 10th. Unindorsed writ issued.

„ 14th. Served on the secretary of the company.

„ 23rd. (No appearance having been entered) plaintiff enters interlocutory judgment, and issues writ of inquiry.

[This writ having been duly served, briefs are prepared as for an ordinary trial, and the plaintiff summons a special jury.]

* Order XIII., Rule 6. See also Bedford's *Guide*.

† Against the goods of the Company, that is.

<i>Date.</i>	<i>Proceedings.</i>
July 5th.	The case is heard before the Under-Sheriff.
„ 8th.	The Sheriff “returns” the writ of inquiry, with the result, to the Exchequer Division, and final judgment is entered up for the amount assessed.

N.B.—If the company, instead of allowing judgment to go by default in the first instance, had entered an appearance to the writ of summons, subsequent proceedings would (*mutatis mutandis*) have ensued, as in the case of *Hudson v. Allingham*. The practical difference between the proceedings on an *indorsed* and an *unindorsed* writ respectively is, that in the former case judgment, *for want of appearance*, can be entered, and execution issued at once, if the defendant *does not appear*; whilst in the case of an *unindorsed* writ for pecuniary damage, the plaintiff, even after such non-appearance, must issue a writ of inquiry for assessing the damages in the manner above detailed after entering interlocutory judgment.

CASE IV.

PARTRIDGE *v.* PARTRIDGE.

This was an action of ejectment, brought by the plaintiff for the recovery of land in Northumberland, in the possession of the defendant; and the substantial point in dispute was, whether the defendant was or was not the legitimate elder brother of the plaintiff.

In 1825 a Mr. William Partridge was residing in a freehold house and grounds situate near North Shields—the subject-matter of this action—with a lady who was reputed to be his wife, and whom he always introduced to his friends as such. In 1860 he died intestate, leaving two sons—Thomas, the defendant in the action, and Alfred, the plaintiff. Thomas, as heir-at-law, entered upon posses-

sion of the property; but, from information afterwards received, Alfred was subsequently induced to make inquiries, which resulted in his ascertaining the following facts: (1) Their mother, in the year 1820, married a Mr. Augustus Bloxam, who afterwards deserted her. (2) In 1825, three years after such desertion, Mr. William Partridge married Mrs. Bloxam, described in the marriage-certificate as "widow." (3) In 1826 the defendant was born. (4) From some unexplained cause, in the year 1829, Mr. William Partridge a second time went through the marriage ceremony with his wife, the contracting parties being again described as "William Partridge, bachelor," and "Ann Bloxam, widow." (5) In 1832 the plaintiff was born. The point in dispute was whether Mr. Bloxam was, or was not, dead in 1825, when the first marriage took place.

The plaintiff, acting on his solicitor's advice, accordingly commenced this action of ejectment to try the question of the defendant's legitimacy; it being clear that if he were legitimate, he was the rightful heir to the property, and if not, the plaintiff. A writ was accordingly issued out of the Queen's Bench, which formally described the property by its abutments, &c., and commanded the defendant to enter an appearance *within sixteen days*. This writ was personally served upon the defendant in the manner followed in actions of ejectment, being read over and explained to him by the process-server at the time of service. Within the time limited the defendant put in an appearance; and thereupon the issue was at once made up, the briefs prepared, the record engrossed, notice of trial given, and, finally, the cause came on to be heard at the Newcastle summer assizes, 1868.* The plaintiff's evidence was the

* The Statute of Limitations (3 & 4 Will. 4, c. 27) prescribes *twenty years* as the period during which actions for the recovery of real property are to be brought; and the plaintiff accordingly had twenty years from William Partridge's death in 1860. See also now 37 & 38 Vict. c. 57. Had the action been a *personal* one (as trespass, for in-

two marriage-certificates, and the certificates of baptism of himself and his brother, supplemented by the evidence of an old servant of Bloxam's, who bore witness that he saw Bloxam alive in 1828, and subsequently attended his funeral in India, towards the end of that year. The defendant, on the other hand, brought forward the death-bed-declaration of another old servant of Bloxam's, taken before a magistrate, which stated that a person giving his name as Augustus Bloxam had died at North Shields Workhouse in 1824; that he afterwards saw the body, and, from certain marks on it, really believed it was that of his master, and that the body was then interred at Mrs. Bloxam's expense, and an inscription, setting forth his name and the date of death, erected to his memory. A rubbing, or tracing, from this tombstone was also produced in evidence by the parish-clerk, who took it himself for the purpose of the trial.* The judge having summed up the evidence, the jury retired, and on coming into court, found for the plaintiff, saying (in answer to a question put by the judge) that they believed the deceased servant to have been mistaken in the identity of the body seen by him at North Shields Workhouse. Judgment was accordingly entered up for the plaintiff. Within the first four days of the ensuing sittings, the defendant moved the Divisional Court for a new trial, on the ground of the verdict being against the evidence; and a rule *nisi* was granted by the Court, which was afterwards, however,

stance) it would have had to be brought within six clear years of its accruing.

Now, as we have before shown, the action of ejectment is the same as other actions (save in case of the particulars of the claim), *i.e.* the trial, time of appearance, and pleadings, &c. (Editor's note).

* This tracing was, of course, only *secondary evidence*, and (had it been possible to bring the original monument bodily into court) its reception might have been objected to on that ground by the plaintiff. But a peculiar exception is allowed to the rule against secondary evidence in the case of inscriptions; and in this case the tracing, being proved by the person making it, was admissible in evidence.

discharged, on the plaintiff's counsel arguing the matter before the Court. Immediately after the discharge of the rule, a writ of *habere facias possessionem* was issued by the plaintiff, and possession accordingly delivered to him by the sheriff on affidavit of service of judgment, and that it was not then obeyed. The plaintiff might formerly have brought a second action (called an *action for mesne profits*) against the defendant, to recover the annual value of the property during six of the eight* years that it was held by the defendant;† but the judge having, after the verdict at the trial at Newcastle, expressed a strong hope that that course would not be resorted to, the plaintiff was induced to forego his strict legal rights in that respect.

It should be observed that the action might (under the County Courts Act, 1867) have been brought in the district County Court, had the annual value of the property been *below* 20*l.* (which, however, was not the case); and in that event possession would have been recovered by means of a *warrant* directed to the high bailiff, instead of a writ of *habere facias*.

* Two years of the eight would have been barred by the Statute of Limitations.

† This is now joined with the action of ejectment (Editor's note).

PART II.

Course of reading for the Third Year—The Intermediate Examination—Points to be attended to in reading for it—Chitty's *Contracts* and Williams' *Real Property*—Smith's *Outlines of Equity*—Hints on answering the Examination Paper—Smith's *Action at Law*—The Statute Law (*continued*).

DURING the ensuing twelve months your reading will probably assume two different phases: the first during the six months immediately preceding your intermediate examination; the second when, that ordeal successfully passed, the more important Final begins to loom large in the distance. For the earlier examination, your necessary reading will be confined to two entire books and a portion of another; for the second, at least half a dozen fresh works are absolutely necessary to be mastered.

For three or four months immediately preceding the Intermediate, your attention during reading hours should be entirely devoted to the special subjects proposed by the examiners,—Williams' *Real Property*, Chitty's *Contracts*, Haynes' *Outlines of Equity*,* Bedford's *Intermediate Examination Guide*, and the *Elements of Book-keeping*.* As to this last, the standard at these examinations, though high enough to insure some knowledge of the subject in those passing it, is not alarming, and, with moderate attention, Chambers' *Book-keeping*, by Inglis, and Bedford's *Guide to Book-keeping*, will do all that is necessary for you. Every young man who goes into a counting-house or bank is expected to have a knowledge of book-keeping at least equal to that required of you by the board of examiners; and although you might certainly reply with some truth,

* These text-books are of course liable to be changed every year. During the present year Book-keeping has been omitted (Editor's note).

that with clerks and cashiers it is the single thing necessary, whereas with yourself it is merely one (and perhaps of the least importance) of a long list of subjects, still you, with your superior professional education, should not be discouraged by that which every broker's and accountant's clerk acquires with comparative ease. Besides, some knowledge of accounts will be absolutely essential to you in practice, particularly if you reside in a Bankruptcy Court district; and I know, speaking personally, that it has proved useful to me once or twice, in the course of a not very extensive nor long-continued practice, when the services of a professional accountant were not available. It used to be said of solicitors (amongst other hard things) that none of them knew anything about figures. The lawyer in England is to the satirist what the medical man is on the Continent—a stock lay-figure, on which his buffets are privileged to fall; but nevertheless some of the failings imputed to the profession by playwrights and “wits” have had some foundation in fact; and amongst them this charge of want of arithmetical *geist* was certainly not the least deserved. It used to be the commonest thing for solicitors in large practice to have terrible arrears of costs, by which they frequently lost considerable sums of money,—simply because of their inability to keep a properly posted day-book and ledger. This state of things will be greatly ameliorated in course of time by the regulations lately introduced in the Intermediate examinations; and when we further consider that, beyond the mere professional costs, nearly every solicitor stands to some of his clients somewhat in the position of a trustee, and from time to time receives money for them, which it is imperatively necessary should be kept entirely distinct from his own proper receipts, it will be quite manifest that a good system of book-keeping, adopted from the commencement, will prove the greatest possible safeguard to professional men. Although on this point all are agreed, there is,

however, considerable difference of opinion existing as to which is the best method of book-keeping for solicitors. Without venturing to pronounce any decided opinion on this head, I have found Chambers' System, by Inglis, a very sufficient one; and I recommend you to follow it, unless you have already commenced on another method. I had at one time contemplated giving you an elementary view of the science of book-keeping in this place; but finding on experiment that it could not be compassed without devoting more of my space than could well be spared, I must refer you to Mr. Inglis's book, which, together with Mr. Bedford's *Guide*, will give you a good knowledge of a subject which is more easy to acquire by oral instruction, and more difficult to explain through a written medium, than any I am acquainted with. Whilst you are perfecting yourself in the practice of book-keeping, you should not neglect to inquire into the meaning of the different commercial terms used in it,—as freight, demurrage, consignment, brokerage, and so on,—and of the customs and usages of trade in each instance. Your books will answer all your inquiries on these subjects, and explain to you by means of examples their practical use in every-day commercial matters. I should say that two evenings a week, regularly for three months preceding your Intermediate, will be sufficient to devote to the subject of book-keeping, which is in its practice far less complicated than would appear at first sight.

You should, during this period, also most carefully go through Williams' *Real Property* and the first, second and third chapters of Chitty on *Contracts* once again. With regard to the former work, I have always found in my conversations on the subject with articled clerks, that the part treating of "incorporeal hereditaments" is the portion of the book which they find most difficult; and, especially, that the distinction between remainders and executory

interests (by way of use and under wills) is often very imperfectly comprehended by them. Now the entire subject of future interests in land is at the same time one of the most interesting and one of the most important within the purview of law; and it is highly necessary that you should thoroughly master its principles. For this purpose you should read the chapters in Williams and in Stephen's *Blackstone* treating of these subjects, side by side, in the manner I have before recommended. It may seem presumptuous in me to attempt telling you anything about remainders and executory interests in the face of these great authorities; but still I cannot resist giving one of my usual "bird's-eye" epitomes, in the hope that it may aid you somewhat in reading up the subject.

Remainders, as you know, are of two kinds: 1. Vested; and 2. Contingent. Both of these agree, in that they are equally future estates in land, depending on a preceding estate, and coming into operation on its determination. Both are created *by deed*, and that deed must also create the prior estate. They differ in these respects: 1. A vested remainder is a future estate *always ready* from the date of the deed (*i. e.* the time of its creation) to come into operation; and the preceding estate may be either a freehold or a chattel interest (term of years); 2. A contingent remainder is a future estate *not always ready* from the date of the deed to come into operation; and the preceding estate *must* be a life freehold at the least.

Take an example or two of each kind of remainder:—

1. In a deed of grant the limitations are "Unto and to the use of A. (purchaser) for his life, and after the determination of that estate unto and to the use of C. and his heirs." This is a vested *remainder* (although the *use* as well as the *seisin* is conveyed); because the estate of C. awaits the regular determination of the preceding estate, and is always ready to come into operation.

2. Deed of grant; the limitations being "Unto A. and his assigns for a term of twenty years, and after the expiration of that term unto and to the use of C. and his heirs." This is also a good vested remainder. It will be observed that no use is limited in the preceding estate in this case; the reason being that chattel interests are not within 27 Hen. 8, c. 10, and cannot therefore stand limited to uses.

3. Deed of grant, "Unto and to the use of A. (an unmarried man) for life, and after the determination of that estate unto and to the use of the eldest child of his body lawfully to be begotten, his heirs and assigns." This is a *contingent* remainder, because the remainderman is not yet in existence: as soon as A. has a legitimate child, the remainder *vests* in him.

4. Deed of grant, "Unto A. and his assigns for a term of twenty years, and after the expiration of that term unto the eldest son of C.'s body to be begotten by his intended marriage with D., and to his heirs." This is a *bad* contingent remainder, and will fail of effect because it is limited on a *preceding chattel estate* (instead of a freehold); nor will it be good as an executory interest (or springing use), because the seisin only, and *not the use*, is conveyed to the intended remainderman. The effect of this would be that (if there were no further limitations or "remainders over") the property would *revert* to the grantor at the expiration of the twenty years, whether C. had a son or not.

An *executory interest* is likewise of two descriptions: 1. An "executory devise," which can only be created *by will*; and 2. An "executory use," which can be either *springing* or *shifting*, and created by limitations to uses in a deed *inter vivos*. Remainders are creations of the old common law, and are construed with its usual strictness; but executory devises, springing and shifting uses, are

“creatures of a newer growth,” and regarded somewhat more favourably. It follows that future estates which fail as remainders *may* be good as executory interests; and, indeed, to take the fourth example above given, had the limitation been “Unto *and to the use of* the eldest son of his (C.’s) body to be begotten,” &c., the bad remainder would have been a good *springing use*. An executory interest has this great difference from a remainder—that it *does not depend upon the regular determination of the preceding estate*, and it may be limited after a fee.

The following are examples of executory interests:—

1. Deed of grant, “Unto and to the use of A. until he shall become bankrupt or insolvent, and immediately thereupon unto and to the use of B., his heirs and assigns,” &c. This would be a bad remainder, but it is a good *shifting use*; and on A.’s bankruptcy, his estate will accordingly *shift* to B.

2. Deed of grant, “To A. and his heirs, to the use of B. and his heirs, from and immediately after the marriage of the said B. to C.” This is a *springing use*; and immediately on B.’s marriage a new estate *springs up* and vests in him. This would be bad as a remainder, because *limited after A.’s fee simple*; but it is good as a springing use. If B. does not marry C., the fee remains vested in A.

3. Will: “I give and devise my house at Ware to A. and his heirs; but if B. shall have a son within twenty years of my death, then to B. for life, and after his death to his eldest child him surviving, and if no such child, then to A. and his heirs.” This is an instance of an *executory devise*. In a deed, such a limitation of the common-law estate after the fee would be simply void; but it is good in a will, as an executory devise.

It is of the utmost importance that you should keep the three classes of future interests—reversions, remainders, and executory interests—quite distinct in your mind; each

being, in fact, an entirely separate description of incorporeal hereditament. You will also observe that, whilst *remainders* are, strictly speaking, only applicable to real property, when *personal* property (such as a sum of consols) stands limited to two or more takers in succession, the expectant estates are called *reversionary interests* (and not remainders, as would be the case if the subject-matter were real property), and the second and subsequent takers are termed reversioners. But you must be careful not to confound this sort of reversionary interest, which is a *chose in action*, with the reversion proper, which is a future estate in real property, arising by implication (and not by express limitation) in favour of the grantor, after the remainders over limited in the deed have determined or taken effect. Although all these incorporeal hereditaments may, at first sight, appear mere legal subtleties, yet their practical use is universal wherever property is to be dealt with otherwise than by simple direct transfer from a vendor to a purchaser. When you consider that every interest taken, whether under a will or by deed, by any person other than the actual first taker, must be either a reversion, remainder, or executory interest of some kind, the practical importance of the legal learning affecting them will be sufficiently apparent.

One other point is necessary to be specially borne in mind whilst reading up Williams for your Intermediate, and that is the distinction between the modes of descent, according to whether the property is real—in which case it devolves in the manner pointed out by the Inheritance Act of 1833—or personal, when it is dealt with in the mode indicated by an act of the reign of Charles II., known as the “Statute of Distributions.” Some influential persons—amongst them Mr. Robert Lowe—have recently professed to be dissatisfied with our dual system of descents, and propose that the present distinctions between real and

You must conscientiously refrain from glancing at the text whilst writing out your epitome, which, being completed, should be corrected and amended from the treatise itself. Repeat this process a second, if necessary a third, time, at short intervals: if, after this process, the first, second and third chapters of Chitty continue a block in your path, you may be quite certain that there is one on your shoulders as well.

Williams' *Real Property* and Chitty's *Contracts* were, until very recently, the only text-books with which the examiners required candidates for the Intermediate to be prepared. They subsequently, however, added a third—Mr. Josiah Smith's *Manual of Equity Jurisprudence**—and to this work I must briefly direct your attention. Smith's *Manual of Equity* is a book treating of the principles upon which our equitable code is based: steering clear of all questions of practice, it deals only with the *science*, and not with the *art* of equity, and is therefore a suitable introduction to its study, alike for barristers and solicitors *in posse*. Compiled mainly from the commentaries of that greatest of Transatlantic lawyers, the late Mr. Justice Story, this book contains within a small compass a vast amount of indispensable information on the subject of equitable jurisdiction. But, this notwithstanding, I must warn you that Mr. Smith's *Manual* is by no means what is called an "easy reading" book. Partly owing to the difficulty of dealing with the subject-matter in an elementary form, and partly to (it must be said) the far from simple literary style of the author, this treatise is, to a young student, very difficult of mastery. The excessive length of the sentences—some of which read more like German translated than idiomatic English—is very discouraging at the outset; and

* Latterly the candidates have been examined from Haynes' *Outlines*. I have allowed the Author's remarks on Smith to stand as useful for the Final, and Haynes is noticed later on (Editor's note).

you will frequently find it necessary to read paragraphs over three or four times before you can fathom their meaning. But this difficulty once got over, you can scarcely fail to be interested by the contents of this book, which is in itself quite a key to the principles of the science of equity. The work is divided into six "titles," or parts, arranged as follows: (1) Remedial Equity; (2) Executive Equity; (3) Adjustive Equity; (4) Protective Equity irrespective of disability; and (5) Protective Equity in favour of persons under disabilities. Falling within the first of these classes are suits of which the objects are to remedy mistakes or frauds of various natures, committed as well by persons falling within the especial purview of the Courts of Chancery—such as trustees and mortgagees—as of others amenable to the common law. The second class comprises all such suits as are instituted for the purpose of *carrying out* or *executing* trusts created by deed or will. The subjects of partnership and administration accounts, of partition, apportionment, and contribution, come within the scope of the third "title"—Adjustive Equity; whilst the fourth and fifth treat of the *protective* jurisdiction of the Courts—notably in the cases of married women, lunatics, and infants—and of the remedy by *injunction*. Originally a sixth division was devoted to the subjects of discovery and perpetuation of testimony—matters which, since the Common Law Procedure Act of 1854, no longer fall *exclusively* within the jurisdiction of the Court of Chancery, and are therefore of less practical importance to the student of equity than was formerly the case, and are now omitted. An introduction is prefixed to the body of the book, explaining the nature and extent of the equitable jurisdiction, and defining the principal maxims, or general rules, upon which the science is based—these serving much the same purpose with the student of equity as the axioms and

definitions prefixed to the propositions of Euclid with the beginner in that study. Each of these divisions must be made a separate "lesson" of. The first section (pp. 1—10), treating of the nature of the jurisdiction of the Court of Chancery, is perhaps the most difficult portion of the book: the second paragraph in page 5 summarises the subject effectually enough, and deserves especial attention. Then (pp. 10—31) come the maxims, each one of which must *not only be learnt by heart*, but thoroughly sifted, and viewed in all its phases. An analysis of each separate "title," made somewhat after the following fashion, may be found useful:—

<i>Title.</i>	<i>Division.</i>	<i>Definition.</i>	<i>Examples.</i>
I. Remedial Equity	(1) Accidental.	"An unforeseen and injurious occurrence not attributable to mistake, neglect, or misconduct."	A., by will, leaves trustees 6,000 <i>l.</i> to be invested in 3 <i>l.</i> per cent. stock for B., so as to bring in 180 <i>l.</i> per annum. The stock is, <i>after A.'s death</i> , reduced by Government to 2½ <i>l.</i> per cent. The residuary legatee must make good the consequent deficiency in B.'s income.
	(2) Mistake.	"An act which would not have been done, or an omission which would	A. contracts to sell an estate to B. for 1,000 <i>l.</i> ; by mistake an estate of C.'s (which A. has no power to sell)

<i>Title.</i>	<i>Division.</i>	<i>Definition.</i>	<i>Examples.</i>
		not have occurred, but from ignorance, surprise, or imposition."	is conveyed instead. On the facts being proved to the satisfaction of the Court, the mistake will be rectified.
(3)	Actual Fraud.	"Anything said, done or omitted by one person with the design of actually defrauding another."	A. contracts at a certain price to sell a house to B. as freehold, and free from incumbrances, whereas it is leasehold only, and heavily mortgaged. B. will be discharged from his contract on the ground of <i>fraud</i> committed by A.
(4)	Constructive Fraud.	"Acts, statements or omissions, which <i>operate as virtual frauds</i> , although unconnected with an actual fraudulent design."	A. sells his business of a surgeon to B., and covenants never again to practise anywhere. A. will be relieved of this contract as a <i>constructive fraud by B.</i> upon the public, being in restraint of A's services in their behalf.

Of course, the other "titles" should be similarly gone through; and, in addition, the system of common-placing before recommended should be resorted to. With these few remarks, I must leave you to the study of Smith's *Manual*.

Having thus carefully studied your necessary text-books, the time has arrived to carefully examine yourself on the subjects you have read, and I can, with the greatest confidence, recommend to you Bedford's *Intermediate Examination Guide*. It is a digest of all the Intermediate examination questions and answers in Common Law, Conveyancing, and Equity, and the answers being given for the most part in the author's own language, and not from any particular text books, but from general knowledge on these subjects, it forms a most valuable guide, not only for the above examination, but also for the Final. Bedford's *Guide to Book-keeping* is too well known to require any comment, save that if the student will only learn it thoroughly he would doubtless be able to puzzle the examiner himself.

And one word as to these digests; they are to be "used and not abused." It is not for one moment to be supposed that they supply the student exactly with the questions that he will be asked, and it is not fair either to the author or the books themselves to rely wholly on them; but I must ask my readers to remember that they are prepared by men who have made these examinations almost their sole study, and consequently they are framed with the view to answering the questions in a workman-like form—shortly, sharply, and concisely; indeed, in such a form as the examiners love, and with no other view, unless it may be to afford a recapitulation of the student's work of months before, and draw his attention to the most important and general principles which the examiners invariably touch upon in these subjects. I have not the slightest hesitation in saying that these digests, prepared as they

are by men of every-day experience, and at the sacrifice of many a leisure hour and night's rest, and after a long, monotonous and heavy day's work, will be found a most valuable adjunct to the not unfrequently overread and bewildered student; and are not indeed to be despised by the virtuous young man, or, as the Greeks used to call him, the "self-satisfied" young man, who looks down upon "coaches" and their works, but who, in some instances, is only too glad to avail himself of their services, provided that no one finds him out, and he can take the entire *κῦδος* of the "pass" to that portion of his body which he is pleased to call his brains.

I will now suppose the Intermediate examination to have arrived, and that you are seated before your paper. The ordeal, after the preparation I assume you to have gone through, is but a slight one; and there is no occasion whatever to be nervous as to the result. Take your questions *seriatim*, and do not look at the second till you have answered the first.* Some candidates rush blunderingly at the paper, and read all the questions through, one after the other, in a fever of mingled impatience and apprehension; the consequence of which is that the different subjects are all "muddled" in their heads—*rudis indigestaque moles*—and we find them informing the examiners (as likely as not) that an estate *pur autre vie* is a contract *not* under seal, or that a "continuing consideration" is an incorporeal hereditament. Keep your subjects distinct, and thoroughly finish with one question before you even glance at the next.†

Do not answer at unnecessary length; the examiners

* If you can (Editor's note).

† My experience teaches me that the best course is for the candidate quietly to read through the paper, first answering those questions which he can easily, and then to go back to those which require thought (Editor's note).

have a not unreasonable prejudice against "long-winded" papers. Of course there is an occasional exception to this rule, and I remember at my own final examination there was one question (set in the criminal division) which it was literally impossible to answer properly except at considerable length; but, as a general rule, all the examiners' inquiries can be satisfactorily replied to within a very small compass, and this is specially the case at the Intermediate examinations. At the same time, you will of course know better than to play the part of a "Jaherr," and answer a mere "yes" or "no"—which, whether right or wrong, would fail to gain you a single mark at the examiners' hands. If you really find you cannot master any particular question it is better to leave it altogether and pass on to the next, than to hazard a "guess," which will probably be wrong and possibly ridiculous. There is no greater mistake than to imagine you can solve any legal question by means of your "common sense." The science of law you will certainly find hereafter to be a system of the most perfect and refined common sense; but as a beginner your *instincts* will be almost sure to lead you astray; and, starting with false premises (in consequence of your want of the necessary technical knowledge), you will infallibly arrive at an equally faulty conclusion. If you do not understand the technical terms employed in a question, it is useless to attempt answering it.

The examiners attach some importance to a neat and unblotted manuscript. Without desiring that candidates should write like engrossing-clerks, they nevertheless expect their handwriting to be legible, and free from unsightly blots and erasures. Upon the importance of correct spelling I need not dilate; as a member of a learned profession you should be, in this respect, like Cæsar's wife—above suspicion.

It is a bad plan to hesitate and fumble over your

answers, writing and rewriting, erasing, modifying, and reconsidering, again and again. After carefully reading the question, think it over deliberately, once for all, and write down, plainly and uncompromisingly, the conclusion you have arrived at. As a general rule, "he who hesitates is lost." There are, of course, many legal problems and moot points upon which there is something to be said *pro* and *con.*, as to which different views may be taken, and different judgments expressed; but questions of this kind are not set at the Intermediate examinations. If after, say, five minutes of cogitation, you are *not quite sure* as to the correct answer to a simple straightforward question, it is tolerably clear that you know nothing about it. I do not go so far as to advise you, in such an event, to refrain from answering the question altogether—that would be throwing away a chance; but still, I would not give much for the soundness of your judgment on a simple matter of yea or nay expressed after so much consideration and reconsideration.

If, after completing your answers, there is time to read over and correct them, do so by all means. I do not think that on the whole much is gained by this process; you are as likely, perhaps, in your over-solicitude, to find out errors in a correct answer as in a false one. Still, I am aware the practice is generally followed, and it may possibly have advantages of its own.

As specimens of the kind of questions asked at these examinations, and of the mode of answering them, I append those put in the Hilary Sitting, 1877, as being the most recent available.* Where there are two *parts* to a question you will, of course, reply to each in the order in which it is asked.

* These questions and answers are taken from the Editor's "Intermediate" Paper (No. 33) (Editor's note).

QUESTIONS AND ANSWERS: INTERMEDIATE EXAMINATION,
HILARY SITTINGS, 1877.*Questions from "Chitty on Contracts,"*

6. Q.—Can executors sue or be sued upon a contract entered into by their testator when they are not named in the contract? Give a reason for your answer.

A.—They can, because it is the presumption of law that they represent the original testator, and are bound by his contracts (Bedford's *Intermediate Examination Guide*, 18).

7. Q.—Is inadequacy of consideration (in point of value) a good ground for impeaching a contract either at law or in equity?

A.—The Court will not inquire into the adequacy of consideration; but will leave the parties to make the contracts for themselves. It is necessary only that there should be a consideration capable of legally supporting an agreement. The magnitude of its value, provided there be legal value, the Court will not consider. (*Pilkington v. Scott*, 15 M. & W. 657; *Hitchcock v. Coker*, 6 H. & E. 447; Bedford's *Guide*, 8.) The same rule prevails in equity, but the inadequacy must not be so gross as to shock the conscience.

8. Q.—Is parol evidence admissible to explain, vary, or annex incidents to a written contract? Give instances.

A.—The language of a written contract cannot be varied or added to by extrinsic or parol evidence, but extrinsic evidence is admissible to explain a latent ambiguity. A latent ambiguity is a doubt arising from circumstances and not appearing in the instrument itself, as in the case of words or phrases which in a trade or business have acquired a technical meaning; or in the case of an estate of Blackacre being left to John Smith, the testator having more than one estate of that name, and the fact of there being many John Smiths in the world (Bedford's *Guide*, 19).

9. Q.—How far does a contract to remunerate a clerk or servant by a share of the profits make him responsible as, or entitled to the rights of, a partner?

A.—By sect. 2 of 28 & 29 Vict. c. 86, it is enacted that no contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking by a share of the profits, shall of itself render such servant or agent responsible as a partner therein, or give him the rights of a partner (Bedford's *Guide*, 230).

10. Q.—Is a government officer under any, and what, circumstances personally liable upon contracts entered into by him in that capacity?

A.—He is not liable personally upon contracts made by him in that capacity, unless he expressly pledge his own personal credit (Chitty on *Contracts*, 9th edit. 257, 258).

11. Q.—Where a passenger is killed by a railway accident, how far is any claim for compensation against the company in respect of his death affected by the application of the maxim, *Actio personalis moritur cum personâ*?

A.—It is in no way affected; 9 & 10 Vict. c. 93, amended by 27 & 28 Vict. c. 95, allows an action to be brought by the personal representatives, to recover compensation from the company (assuming the passenger's death to have been occasioned by a tort, which would have entitled him to damages had he survived) within twelve calendar months after the decease, for the benefit of husband, wife, parent, or child; and by 27 & 28 Vict. c. 95, if there be no personal representative, or if the action is not commenced within six months after the decease, the parties beneficially entitled may sue in their own names (Bedford's *Guide*, 37).

12. Q.—Can a solicitor who has undertaken a law suit for a client, under any, and what, circumstances refuse to proceed? Or is he bound to continue his services until the suit is concluded?

A.—He may upon reasonable cause and reasonable

notice abandon the conduct, and recover his costs for the period during which he has been employed (Chitty on *Contracts*, 528).

Questions from Williams on "Real Property."

13. Q.—What acts on the part of the tenant for life are waste? And where the estate of a tenant for life is expressly declared to be without impeachment of waste, what acts will be restrained by the Court as equitable waste?

A.—Pulling down houses, cutting down timber, opening and working mines, are acts of voluntary waste; suffering premises to go to ruin is an act of permissive waste; and even though the estate of the tenant for life is expressly declared to be without impeachment of waste, the Court of Chancery will enjoin him from making spoil and destruction on the estate; as pulling down the mansion house, cutting down ornamental timber, or ploughing up meadow land (Bedford's *Guide*, 83).

14. Q.—State the longest period for which lands can with certainty be tied up or fixed as to their future destination, and the longest period during which the income of land may be directed to be accumulated.

A.—The time limited in the first part of the question is any life or number of lives in being, and twenty-one years after, a further period being allowed for gestation, should gestation exist. (*Cadell v. Palmer*, L. C. Conv. 321). 39 & 40 Geo. III. c. 98, prohibits the accumulation of rents, &c., for any longer term than the life of the grantor or settlor or twenty-one years from his death, or during the minority of any person or persons who shall be living or in *ventre sa mère* at the time of the death of such grantor, or during the minority only of any person or persons who, under the instrument directing such accumulation, would for the time being, if of age, be entitled to the rents, issues, profits, or produce. But by sect. 2, the Act does not extend

to provisions for debts, or portions for children, or produce of timber, or wood, which periods of accumulation, of course, are governed by the ordinary rule of executory interests. (*Lord Southampton v. Marquis of Hertford*, 2 V. & B. 54; *Bedford's Guide*, 67, 70).

15. Q.—If a tenant in fee simple settle land on his children, and afterwards sell the same land to a person who has notice of the settlement, will the persons interested under the settlement or the purchaser be entitled to the land?

A.—The purchaser, because by 27 Eliz. c. 4, the settlement, as it is a voluntary one, is void as against subsequent purchasers for value, with or without notice, save in the case of a gift to a charity, and in that case notice binds the purchaser (*Buckle v. Mitchell*, 18 Ves. 100; *Bedford's Guide*, 115).

16. Q.—Define the purchaser from whom the descent of real estate is, according to the Acts for the Amendment of the Law of Inheritance, to be traced.

A.—The purchaser is defined by the Inheritance Act (3 & 4 Will. IV. c. 106) to be “the person last entitled who did not inherit” (*Bedford's Guide*, 63).

17. Q.—In what manner are the words “die without issue” in a will directed by the Wills Act to be construed?

A.—The words are not to be construed to mean an indefinite failure of issue, as they did prior to the Wills Act (1 Vict. c. 26), but simply a want or failure of issue in the lifetime or at the death of the party, unless a contrary intention shall appear by the will (*Bedford's Guide*, 136).

18. Q.—In drawing a settlement of real estate to the use of A. for life, with remainder to B. for life, with remainder to the first and other sons of B. successively in tail male, with remainder to C. for life, with remainder to the first and other sons of C. successively, in tail male; how is power given to sell the settled estate, or part of it, and convey to purchasers?

A.—The deed should contain the proper and usual

power of sale and exchange, providing for the trustees of the settlement, with the consent of the tenant for life in possession under the settlement, and sometimes also at their own discretion during the minority of the tenant in possession, to sell or exchange the settled lands, and for that purpose to revoke the uses of the settlement as to the lands sold or exchanged, and appoint such other uses in their stead as may be necessary to carry out such purpose (Bedford's *Guide*, 113; Prideaux's *Precedents*, vol. ii. 8th edit. 194).

19. Q.—What interest has a copyhold tenant in fee in the mines and minerals under his copyhold land and in the timber growing on the surface?

A.—In the absence of a custom to the contrary or immemorial usage, the mines and timber belong to the lord, but he cannot come on the land to exercise his rights over them without the permission of the copyholder; and on the other hand, if the copyholder open the mines or cut down timber, a cause of forfeiture would ensue (Bedford's *Guide*, 58).

Questions from Haynes' "Outlines of Equity."

20. Q.—Land in settlement is taken by a railway company under compulsory powers, and the price paid into the Court of Chancery and invested in Consols. Are these Consols treated by the Court as real or personal estate, and why?

A.—If the property taken under the Act is in settlement, or the owner is under disability, the purchase-money still bears the character of realty (*Harrop's Estate*, 3 Drewry, 933; Bedford's *Guide*, vol. ii. 8).

21. Q.—Define the different classes of persons coming under the general description of persons not "sui juris."

A.—Infants, married women, persons of unsound mind, lunatics, idiots (Bedford's *Guide*, 222).

22. Q.—Explain the distinction between penalties and liquidated damages.

A.—A penalty is a sum named in the contract to be forfeited on a breach, not as an agreed valuation of the damages, but as a security for the due performance of the contract.

Liquidated damages are the sum agreed upon in the contract by the parties themselves as the damages for the breach of it (*The Final*, No. 20, answer to Question 8).

23. Q.—In what cases will the Court reform an instrument on the ground of mistake?

A.—If by mistake a written agreement contains less than the parties intended, or contains more, or simply varies from their intent by expressing something different in substance from the matter of that intent, in all such cases, if the mistake is clearly made out by proofs entirely satisfactory, Equity will reform the contract, to make it conformable to the intention of the parties. But the Court will grant no relief against *bond fide* purchasers for valuable consideration (*Glenorchy (Lord) v. Bosville*, 1 L. C. Eq. 1; *Bedford's Guide*, vol. ii. 34).

24. Q.—A man by his will gives a portion of 5,000*l.* to his daughter. She subsequently, in his lifetime, marries, and he thereupon settles 2,000*l.* upon her by deed, and dies without having revoked or altered his will: What effect, if any, has the settlement upon the operation of the will?

A.—It would operate as a satisfaction *pro tanto* of the portion given by will in the absence of any evidence to the contrary (*Bedford's Guide*, 39 *et seq.*).

25. Q.—In what cases of public nuisance can a man obtain an injunction in an action in which he is himself sole plaintiff?

A.—Individuals suffering a peculiar injury from a public nuisance distinct from that done to the public at large, can file a bill for relief without making the Attorney-General a party (*Bedford's Guide*, vol. ii. 16).

26. Q.—In case of a contract for the sale of land, to be completed on a given day, is time of the essence of the contract? And state any exception to the rule you lay down.

A.—It is not in Equity, nor, indeed, even now at law, under the Judicature Acts, unless it is expressly so stated, or unless the property be of a fluctuating value, such as leaseholds, reversions, advowsons, &c.

*Book-keeping.**

27. Q.—What are the books generally used by merchants, and in what order is a prime entry carried from the first to the last of them?

A.—(1) Day Book, (2) Invoice Book, (3) Cash Book, (4) Bill Book, (5) Ledger.

A prime entry would be carried from the book in which such entry would necessarily be made into the Ledger (Bedford's *Guide to Book-keeping*, 2nd ed. 2).

28. Q.—Assuming all the trader's receipts and payments to pass, as usual, through his bankers, why are not the accounts current written up directly from the Pass Book?

A.—A trader whose receipts and payments are all passed through his banker's account could not conveniently use the Pass Book for posting from; the Cash Book in this case would prove a check upon the banking account; in addition to which, the further advantage accrues from the use of the Cash Book—viz., the carrying through the same the amounts of discounts allowed or received.

29. Q.—A customer's acceptance, given in payment for goods, is returned to the seller at maturity unpaid. What entry does the latter thereupon make, and where?

A.—If the customer's acceptance had been discounted by the banker, then the amount would come through the Cash

* During the last year papers on Book-keeping have been omitted (Editor's note).

Book, and be charged to the debit of the customer's account in the Ledger.

If the acceptance remained in the drawer's hands until maturity, and was presented by him and dishonoured, then the amount would be credited to Bills Receivable account in the Ledger, and debited from this account to the customer's account in Ledger.

30. Q.—What is a suspense account, and the object of it?

A.—A suspense account is used for the purpose of carrying off amounts paid or received, the purpose of which cannot be immediately assigned.

31. Q.—What is meant by keeping an account as an "interval account"?

A.—An account current, it being understood that the balance should be struck at stated intervals, with the interest adjusted at these periods.

Your Intermediate examination having been successfully encountered, I would counsel a month's entire holiday before recommencing your reading with a view to the Final examination. This "resting-stage" passed, you should attentively peruse the introductory portion of Smith's *Action at Law*, a book concerning which I purpose speaking more at length hereafter.* In alternation with this, you should a second time go through the two earlier volumes of Stephen's *Blackstone*, and Mr. Williams' treatise on *Personal Property*, with both of which works I assume you to be already, in some degree, familiar.

Again, in addition to Smith's *Action at Law*, Stephen's *Blackstone*, and Williams' *Personal Property*, a very useful little book to study at this time is Dr. James Walter Smith's handybook of the law of Bills and Notes; and the brief but satisfactory epitome of the law of Executors by Mr. Holdsworth should also be perused. These two last-named books are both very short and very easy, and ought

* See Chapter IV. Part II.

not to take you more than a fortnight apiece to master; but you will find that they will much facilitate your reading hereafter, when you take up the standard text-books on these subjects by Sir E. V. Williams and Mr. Justice Byles. If you can also find time to read Mr. Josiah Smith's *Manual of Common Law*, it will be as well to do so, although the book is not strictly necessary.*

The following statutes should be read during the year. The six first named will take a month's reading apiece, at the rate of one hour a day regularly; the four short acts following can be easily disposed of in two months more; this will leave you a clear four months to read through the last act on the list—the formidable but indispensable Common Law Procedure Act, 1852, which should be methodically studied before attacking Smith's *Action at Law* at the commencement of your fourth year. This act (as supplemented by the Acts of 1854, 1860, and 1867) is the foundation of all the modern common law practice; it should be read section by section, copiously analysed, and diligently commonplacéd. Without a tolerably familiar knowledge of this statute, you will always be at sea in the practice of the common law, with which you will probably have more to do during the earlier years of your career than with any other branch of the profession.

LIST OF STATUTES TO BE READ DURING THE THIRD YEAR.

22 & 23 Car. II. c. 10.	"Statute of Distributions."
3 & 4 Will. IV. c. 106.	"Inheritance Act."
14 & 15 Vict. c. 99.	"Evidence Act" (Lord Brougham's).
17 & 18 Vict. c. 125.	"Common Law Procedure Act, 1854."

* In my experience it is of the utmost importance, as many of the questions on the theory of common law are framed from it (Editor's note).

23 & 24 Vict. c. 126.	"Common Law Procedure Act, 1860."
30 & 31 Vict. c. 142.	"County Courts Act, 1867."
9 Geo. IV. c. 14.	"Lord Tenterden's Act."
3 & 4 Will. IV. c. 105.	"Dower Act."
9 & 10 Vict. c. 93.	} "Lord Campbell's Acts."
27 & 28 Vict. c. 95.	
15 & 16 Vict. c. 76.	"Common Law Procedure Act, 1852."

N.B. I would suggest that the three Procedure Acts and the County Courts Act of 1867 be grouped together, and read chronologically.* Thus, commencing in January, the first five months of your third year will be taken up by the "Evidence," "Dower," and "Inheritance" Acts, by Lord Campbell's two Acts, by the "Statute of Distributions," and Lord Tenterden's Act. Then, starting with the beginning of June, your time for four months will be filled up with the Procedure Act of 1852; and the year will be finished with a month apiece given to the Acts of 1854, 1860, and 1867.

* I have allowed these Common Law Procedure Acts to stand. The student, of course, must now *learn* the Judicature Acts and Rules, because so much of them is embodied in the new practice (Editor's note).

CHAPTER IV.

THE FOURTH YEAR.

PART I.

The Fourth Year—The County Courts—Method of acquiring a knowledge of practice—Hints on advocacy.

FROM henceforth, until the time when you are assigned to your principal's town agent, you will find it expedient to read more during office hours than you have hitherto been in the habit of doing.* Three years of diligent attention to the business of the office can hardly have failed to make you tolerably well acquainted with the routine of country practice; the twelvemonth to be hereafter passed in London will equally familiarise you with the details of town work: the intervening period—your fourth year—cannot be better employed than in assiduous reading. Now, in fact, is the time for acquiring a competent knowledge of the principles of equity and real-property law. The bustle, novelty, and excitement of the agency-office will be found uncongenial to continuous study; the different Courts at Westminster and Lincoln's Inn, the varied proceedings at Chambers, and the routine of the public offices, will fully engage your attention from the time of your arrival in London, until the two or three months of fierce but superficial reading which most articulated clerks indulge in previous to their final examinations. But the intervening year—situate midway between the second and last of your three

* If your principals will allow you, and you will find a difficulty in gaining their consent if you are much use as a clerk, because you ought just to be getting valuable to them (Editor's note).

ordeals—is precisely the period most suited to a steady and earnest course of reading. The books you have already perused—and I hope mastered—will have served to inform you of the fundamental principles upon which the three great divisions of our jurisprudence are based. It now remains to acquire a more detailed knowledge of the subjects you have already viewed (so to speak) in gross. This fuller knowledge can only be acquired by continuous reading.

But, in order to give occasional relief to your reading, I advise that you should from time to time attend the sittings of the different local courts, partly because this will be no bad preparation for your attendance next year at the superior courts of law and equity in London, and partly because a knowledge of their practice is indispensable to most young professional men. The County Courts, in particular, will claim your attention. Time was—and not so very long ago either—when the County Court was a limited and unimportant tribunal, whose jurisdiction was almost entirely confined to the settlement of small disputed accounts between debtors and creditors. Whilst this was the case, the better class of solicitors continued to “fight shy” somewhat of County Courts, and to look upon attendance there as a waste of time and as almost derogatory to their professional *status*. But this is no longer the case. The object of law reformers for many years past has been to avoid the evils of “centralisation” in legal matters. It was deemed monstrous that trifling questions should occupy the attention of the Courts at Westminster and Lincoln’s Inn—thus involving an expenditure enormous comparatively to the amount in dispute, and the attendance of highly-paid officers and advocates, and of shoals of country witnesses. The district county courts, established first in the year 1846, were, after due experiment, thought worthy of an extended jurisdiction. Accordingly, in 1865, the

Court was empowered to entertain certain equitable matters, where the amount involved was small; and two years later this jurisdiction was enlarged, by the County Courts Act, 1867, to all matters cognizable by the Vice-Chancellors of the Court of Chancery, where the value of the suit was under 500*l*. In the same Act there were (as you have already seen whilst perusing it) sundry clauses, largely extending the existing common-law jurisdiction of the Courts; and it may now roundly be stated that nearly every case of which the subject-matter is small can be tried on the spot where it originated. These provisions have, as was inevitable, largely changed the character of the County Courts, which are no longer tribunals unworthy the attention of the respectable portion of the profession.* It is, however, probable that for some years to come County Court practice will be left mainly in the hands of young lawyers—of junior partners in established firms, and of men newly admitted to practice, and it therefore becomes doubly necessary that you should, whilst yet a learner, obtain some knowledge of a practice which will very probably occupy a somewhat prominent position with you in the commencement of your professional life.

The jurisdiction of the County Courts, as at present established, was threefold—embracing (1) Bankruptcy, (2) Equity, and (3) Common Law. In each of these cases, however, the powers of these local tribunals were confined, as will be seen, within certain defined limits. By the Judicature Act, 1873, the County Court is to administer law and equity, and afford such remedy and relief which either a Court of Law or Equity could formerly have given. First,

* The student must also carefully peruse the County Courts Act of 1875 and the rules thereunder, rendered necessary by the passing of the Judicature Acts; they came into operation on the 2nd November, 1875, and by them all previous rules, except under the Charitable Trusts, the Probate and Bankruptcy Acts, are to cease to be used (Editor's note).

as to their bankruptcy jurisdiction, by 32 & 33 Vict. c. 71, such County Courts as the Lord Chancellor may have appointed are given exclusive jurisdiction in bankruptcy, except where persons reside in the London district as defined by the Act; and by 33 & 34 Vict. c. 76, they have power to issue warrants to arrest absconding debtors, in the event of debtors' summonses having already been issued against them. The forms and rules of the Court of Bankruptcy are directed to be used, with certain modifications, in these proceedings. The decision of the County Court judge sitting in bankruptcy may be made the subject of an appeal to the chief judge, and thence to the Court of Appeal.*

The equitable jurisdiction of the County Courts, under the combined operation of the Acts of 1865 and 1867, may be shortly defined as extending to all suits in which the Vice-Chancellors of the Court of Chancery have jurisdiction, where the value of the subject-matter is below 500*l*. By the Joint-Stock Companies Amendment Act, 1867, the County Court judges also acquired jurisdiction in winding-up proceedings under that Act and the Companies Act, 1862; but their powers are entirely within the discretion of the Court of Chancery, to which all petitions for winding-up must be presented in the first instance. The County Courts have no power to entertain proceedings in lunacy, however; and it is generally understood (though I know not on what authority) that cases involving the right of the Crown are also excluded from their jurisdiction.† An equitable suit in the County Court is commenced by a plaint being entered, accompanied by a "concise statement" setting forth the grounds of complaint, and the relief which the plaintiff considers he is entitled to. The plaint and "concise statement" con-

* See Bedford's *Guide to Bankruptcy* (Editor's note).

† See, however, 16 & 17 Vict. c. 107, ss. 263, 318, 319 (Editor's note).

joined fulfil the purpose of the old "Original Bill" in Chancery. Upon this plaint being filed the registrar makes out a summons calling on the defendant to appear and submit to the judgment of the Court, and this summons is served by the high bailiff. Within eight days after service, the defendant (if he intends to contest the matter) delivers to the registrar his "counter statement," which is also filed, and is something in the nature of the old "Answer" in a Chancery suit. On the day on which the summons is returnable the parties attend the Court, and the suit is heard, in much the same manner as common law plaints—the parties appearing either by counsel or by their attorneys, and the evidence being taken *vivâ voce*. If the judge desires to be satisfied as to the state of the accounts, the relations of the parties, or other matters of detail, he refers it to the registrar, who makes a report thereupon in the form of a written certificate. The judge then pronounces a decretal order, or a final decree, as the case may be, which is drawn up by the registrar from his "minutes" of the judgment, settled and sealed. The decrees of the County Court judges sitting in equity are enforced by writ of *fi. fa.*, and warrants of possession or assistance (as the case may require), issuing to the high bailiff, who is to the County Courts what the sheriff is to the superior courts at Westminster.

The common law jurisdiction of the County Courts has latterly been considerably enlarged. It now extends (1) to all actions of contract, except breach of promise of marriage,* where the amount claimed is under 20*l.*; (2) *at the option of the plaintiff*, to actions *ex contractu* of which the subject-matter is above 20*l.* and below 50*l.* in value; (3) to

* Breach of promise of marriage may be tried in the County Court by consent (Editor's note).

actions *ex delicto* or *ex contractu* to any amount, where the parties agree thereto in writing; (4) to actions of *tort* where the damage sustained is under 10*l.*; (5) to actions of *tort* irrespective of the amount of damages, where a judge of the superior courts remits it under the provisions of the Act of 1867; (6) to ejectment, and actions involving questions of title where the annual value of the property is under 20*l.*; (7) to certain proceedings under the Absconding Debtors' Arrest, Succession Duty, Merchant Shipping, Literary Institutions, Friendly and Provident Societies Acts; (8) to *replevin*, and by 31 & 32 Vict. c. 40, to partition where the value of the property does not exceed 500*l.*

These proceedings, with some few exceptions, commence by plaint and summons. With every plaint "particulars of demand" (corresponding to the "old declaration" in the superior courts) must be furnished. The summons is served by the high bailiff of the Court, and is heard on the return day. As a general rule, the plaint must be issued in the Court attached to the district in which the defendant resides; but leave may be obtained of the registrar to issue it in the plaintiff's district if it can be shown that *any part* of the cause of action arose there.* In one special case (that of debts due from a retail to a wholesale trader, for goods supplied by the latter for trading purposes) some new and very salutary provisions are made by the second section of the County Courts Act, 1867, which you have already read. In actions not involving questions of title, the decision of the County Court judge is final

* Where a commercial traveller takes an order and the customer names the mode of conveyance of the goods, the traveller's principal may sue the customer *at the place where the goods were delivered to the carrier named by him*, such carrier being considered, at law, the customer's agent, and delivery to an agent being equivalent to delivery to a principal.

where the amount involved is under 20*l*. Where it exceeds that sum, or where questions of title to real property are involved, an appeal lies to a Divisional Court of the High Court of Justice, composed of judges assigned for that purpose.* Applications for a new trial before the County Court judge may, however, be made, in most cases, within twelve days of the original decision; and, provided due notice is given by the party obtaining the order for new trial, the case is again heard; but such order does not delay execution, and as the same judge who tried the case in the first instance presides at the new trial, applications of this nature are also but seldom resorted to. The judgment of the Court is enforced by warrant of execution, the high bailiff levying in a similar manner to the sheriff in actions in the superior courts. Formerly, in case there were no goods upon which execution could be levied, a "judgment summons" was sued out by the plaintiff, and the defendant was examined in Court as to his means of payment; and where the debt was contracted fraudulently, or without reasonable prospect of repayment, or where the defendant stood towards the plaintiff in the relation of a defaulting trustee,—in all these cases the Court had power to commit the defendant to prison for a period not exceeding forty days. But this section of the 1846 Act is repealed by the Bankruptcy and Insolvent Repeal Act, 1869. And by 32 & 33 Vict. c. 62, s. 5, the Court has power to commit to prison for a period not exceeding six weeks, or until payment of the sum due, any person making default in payment of any debt or an instalment of a debt due from him in pursuance of any order or judgment, provided that it has been proved to the satisfaction of the Court that the person making default either has or has had since the date of the order or judgment the means to pay the sum

* See Bedford's *Guide to the Judicature Acts* (Editor's note)..

in respect of which he has made default, and has refused to pay the same. The power is to be exercisable only by the County Court judge or his deputy, and by an order made in open Court, and showing on its face the ground on which it is issued; and it is only to be exercised in respect of a judgment of the High Court when it does not exceed 50*l.* exclusive of costs.

The above brief summary of County Court practice is necessarily very imperfect; but it may serve in some measure to afford you a general idea of the jurisdiction and practice of those tribunals, preparatory to attending in court (as you occasionally should do) for the purpose of watching the proceedings.

It was, I believe, some time since proposed by the junior members of the Bar to take steps with a view of obtaining exclusive audience for barristers at the county courts, such as they now enjoy in Westminster Hall. The idea was, however, abandoned almost as soon as formed; and it would have been found impossible to carry out such an arrangement in practice, owing to the greatly-increased expense which the employment of two distinct persons—the attorney and the advocate—would have occasioned. Consequently, it may now happen, more or less often according to the nature of your practice, that you will have occasion to appear in the character of an advocate, in cases where the employment of counsel is impracticable or inexpedient. The qualifications necessary for a solicitor are, I need hardly point out, essentially different in many respects from those requisite for an advocate; but if your practice is at all of a general character, it will be incumbent upon you to attempt in some measure to combine them. In the view of your possible employment in contested cases in the County Courts, under the Act of 1867, I think it advisable to give you a few practical hints upon the subject of advocacy; although here I obtrude my advice upon you with

considerable diffidence, owing partially to the (if I may so term it) *unwritableness* of the subject, but more to my own incapacity to deal satisfactorily with it. Still, I have thought it better to incur the risk of censure in this respect than in a book like this, specially designed to aid learners of the profession, to omit all mention of a branch of practice of daily-increasing importance.

The first piece of advice I have to give you is, that you immediately read Mr. Cox's work, *The Advocate*, originally written week by week in the *Law Times*, but now published in a collected form. You will not find this a very difficult task, the volume in question being, as is natural, far "easier reading" than any regular law treatise can be expected to be. One portion of Mr. Cox's book I must, however, warn you against expecting too much from,—I allude to the chapters on Emphasis and Inflection. The author has done as much as could well be done with these subjects; but it is absolutely impossible to teach effectually such matters as these by anything short of actual practice and oral instruction.

I remember reading a letter of advice addressed by Lord Brougham to a young law-student, and touching, in his lordship's usual felicitous manner, amongst other things, on the subject of advocacy. "Never lose an opportunity of speaking," wrote his lordship (I am quoting from memory); "speak, whether you have anything to say or not; accustom yourself to hear your own voice without trembling: you will find matter enough to talk about when you have once succeeded in overcoming your first nervousness." This advice was given to a young barrister; but it equally applies to the attorney-advocate. If you are lucky enough to be in a town where there is a law-student's debating society, join it without hesitation, and speak as often as you can manage to get a hearing. You will at first bore your audience, it is true; but that

will soon in some measure, it is to be hoped, right itself; besides which the "boreing" will probably be a mutual transaction. If there is no law association open to you, join a general debating society, and cultivate the accomplishment of *impromptu* speaking. You will find no lack of matter to choose from in societies of this nature, where every subject under the heavens is in turn ventilated.

To correct the *ad captandum* style of argument which debating societies may betray you into, it is essential that you should study the science of logic; and for this purpose the smaller edition of Dr. Paley's work on that subject will be found useful. I need scarcely add that you should read the doctor's book *out of office hours*.

A very good opportunity for acquiring proficiency in the *mechanical* part of advocacy is afforded by the penny-readings with which provincial society has latterly been so much occupied. For elocutionary purposes I should recommend the selection by you of poetical rather than prose readings, as being the better practice for the voice. You will learn one other thing, too, from attempts of this nature—you will get to understand the moods of audiences, and to know when you are interesting and when ceasing to interest them.

Of course you will not forget, in attending the court, to note the characteristics of the practitioners who figure there, observing the points in which each one of them succeeds and those in which he fails. It has been said—and, what is more, credited by many—that sound law and good advocacy seldom go together; but judging from what I have myself observed in the gentlemen of the bar at *Nisi Prius* as well as in *Banco*, I should be disposed to dispute this conclusion. If you were obliged of necessity to choose between being an efficient lawyer and a fluent speaker, there can be little doubt, as a solicitor, which of the two should be preferred by you; but I cannot conceive that it

is at all necessary, even in our walk of the profession, that a man should stutter and stammer in order to know anything of real property law; nor can I trace any intimate connection between a weak voice and poor delivery, and a competent acquaintance with "the books." Whenever, therefore, you notice a County Court or Bankruptcy practitioner whose address strikes you as good in any respect, try to find out what his peculiar oratorical virtue may be; and if your model advocate should happen to be an incompetent lawyer, regard it rather as an accident than as a necessary consequence of his proficiency as a speaker.

One word more, and I have done with this subject. Do not, under any circumstances, allow your debating societies, your readings, and your attendance at Court, in any degree to interfere with your more serious studies. As I have before said, the fourth year of your articles is the time, above all others, for reading. In the succeeding part of this chapter I shall indicate the particular books which I conceive to be the best suited to your perusal at this stage of your studies; and although the list may appear at first sight a somewhat alarming one, still, with the grounding I assume you to have already received, it is not more than a twelvemonth of ordinary application will enable you to achieve satisfactorily.

PART II.

Course of reading for the Fourth Year—Smith's *Action at Law* (continued)—Haynes' *Outlines of Equity*—Hunter's *Suit in Equity*—Powell on *Evidence*—Sugden's *Vendors and Purchasers*—Stephen's *Blackstone* (vols. iii. and iv.)—*Chitty on Contracts* (second chapter)—The Statute law (continued).

THE book which stands first in the above list—Smith's *Action at Law*—deservedly enjoys the favour of the authorities at the Law Institution, of which its learned author (now deceased) was for many years a distinguished ornament;* and from its pages all the Final Examination questions on the subject of common-law practice are set. It is a work which perhaps from its nature taxes the *memory* even more than the *understanding* of its readers. You will experience comparatively little difficulty in comprehending the author's meaning, but will nevertheless find that, even after a very careful perusal of any one particular chapter, many of the details contained in that chapter will have escaped your recollection. This is a necessary consequence of the nature of the subject, which, the introductory portion excepted, is almost entirely a collection of *facts*—of matters of detail, occurring in the routine of practice. For the principles which govern the common law, you must look elsewhere—to Stephen's *Blackstone*, *Chitty on Contracts*, and Josiah Smith's *Manual of Common Law*. The book of which I am now speaking simply is what it pro-

* Mr. J. W. Smith was one of the most successful lecturers that ever appeared in the hall of the Incorporated Law Society. His series of discourses on the Law of Contracts (known, in their collected form, as *Smith on Contracts*) have always been highly esteemed by the profession.

fesses to be—a well-digested statement of the ordinary *de cursu* practice of the courts. In reading it, you must bear in mind the changes introduced by the County Courts Amendment Act, 1867, the provisions of which (particularly those contained in sections 5, 7, 10, 11, and 12) have largely altered the character of common-law practice in several important respects.* The subject of costs, in especial, is so greatly modified by the 5th section of that Act, that I should advise you, in reading Mr. Smith's book, to leave out the chapter on "Costs" altogether. You will also have to recollect that writs of trial before the sheriff were entirely abolished by the 6th section of the same Act, and you should therefore omit reading all such portions of Smith's *Action at Law* as treat of that subject. The chapters of this book which I found most difficult to retain whilst studying it were those on "Error"† and "Execution." With regard to the former, you should clearly bear in mind the distinction that exists between "error in law" and "error in fact"—this will save you a great deal of perplexity. In respect of the latter subject, the remarks I have already made in the earlier part of this book on the writs of *fi. fa.* and *elegit* may have given you some general preliminary knowledge of the matters fully treated upon in Mr. Smith's treatise. The details as to *time*—the "Time-table," as it is called—will puzzle you at the commencement. I think you would find it a good plan to make a comparative analysis for yourself, somewhat in the following form, filling up the details, from time to time, as you find them given in the text:‡

* The Judicature Acts and Rules have, of course, necessitated the entire rewriting of the book, which has been most ably done, in the 12th edition, by Mr. Foulkes (Editor's note).

† Error has been abolished by the Judicature Act and Appeal substituted (Editor's note).

‡ See also Bedford's Table of Principal Steps and Times in an Ordinary Action in the Supreme Court of Judicature.

TIME-TABLE.

<i>Writs under B. of E. Act.</i>	<i>Indorsed Writs of Summons.</i>	<i>Unindorsed Writs of Summons.</i>	<i>Writs in Ejectment.</i>
1. Time to appear (from date of service).	Within twelve days. [On obtaining leave from a judge in Chambers.]	Within eight days. [On non-appearance, interlocutory judgment may be entered.]	Within eight days.
2. Statement of claim (from date of appearance).	None generally. Within six weeks from appearance.	Must be within six weeks from appearance.	Within six weeks from appearance.
3. Statement of defence.	None generally. Within eight days. [If none delivered, judgment in default may be entered.]	Within eight days. [If none delivered, judgment in default may be entered.]	Within eight days. [If none delivered, judgment in default may be entered.]

Complete, in a similar manner, by adding the proceedings in each case up to execution.

Another useful plan, whilst reading Smith's *Action at Law*, is to make brief summaries of the more exceptional species of proceedings. The following examples may serve to elucidate my meaning:

I. PROCEEDINGS TO OUTLAWRY.

1. Writ of *ca. sa.* issued returnable in term.
2. Sheriff's return—*non est inventus*.
3. Writ of *exigi facias* issued.
4. Defendant was called at five consecutive County Courts.
5. Writ of *exigi facias* returned, with outlawry signed by the coroner in London, by the vendor.
6. Outlawry entered on the outlawry roll.

[N.B. After these proceedings the outlaw's person might be seized, if he could be found; his personal property was forfeited; but the process of outlawry did not affect his future interests in real estate.]*

II. PROCEEDINGS TO SET ASIDE AN AWARD.

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|--|--|
| 1. Where submission made a rule of court under 9 & 10 Will. 3, c. 15. | By motion, on notice to be made before last day of the term following award. |
| 2. Where reference compulsory, under Common Law Procedure Act, 1854 (ss. 3—9). | By motion, (within first) seven days of the term following award. |
| 3. Where reference by consent at <i>Nisi Prius</i> . | By motion, within the time allowed for moving for a new trial. |

* But now see 32 & 33 Vict. c. 62 (Editor's note).

III. PROCEEDINGS UNDER THE TITHE COMMUTATION ACT.

1. Ten days' notice of accrued rent-charge (not less than six months, nor more than two years) given to tenant of premises.
2. Twenty-one days after non-payment, upon expiration of time limited in above notice (i.e. thirty-one days in all), *distrain*.
3. If no distress can be found on the premises, and the arrears are overdue for forty days from the day on which the rent-charge became payable, the owner of the rent-charge may have a writ of assessment, and then a writ of possession.

[N.B. Only two years' arrears of a rent-charge can be recovered.]

The above are only three out of many exceptional proceedings in the common-law courts: I should counsel you, whilst reading Mr. Smith's work, whenever you come to anything at all departing from the ordinary course to forthwith make a summary of the proceedings.

I remember being greatly perplexed, when first reading the subject, at the distinctions existing between the kinds of property which were privileged in the cases of distress and execution respectively. I made a parallel statement, however, which I *learned by heart*, and thus got rid of the difficulty. Here it is:

EXECUTION AND DISTRESS.

The following goods, &c. are privileged—

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|--|---|
| (1) from execution, | (2) from distress. |
| 1. Wearing apparel and bedding of debtor, not exceeding 5 <i>l</i> . | 1. Whatever is in a man's <i>personal use</i> at the time of distress being levied. |

- | | |
|--|---|
| 2. Implements of his trade,
not exceeding 5 <i>l</i> . | 2. Animals <i>feræ naturæ</i> . |
| 3. Goods of a stranger. | 3. Goods of a stranger de-
livered to be wrought
by tenant, &c. <i>in the</i>
<i>way of his ordinary</i>
<i>trade</i> . |
| 4. (In the case of a writ
of <i>elegit</i>) advowsons
in gross, and glebe
lands. | 4. Loose money. |
| 5. Fixtures affixed to the
freehold. | 5. Perishable articles. |
| 6. Goods <i>in custodia legis</i> . | 6. Fixtures affixed to the
freehold. |
| | 7. Goods <i>in custodia legis</i> . |

I do not know that I can give you any practical hints upon the mode of attacking Smith's *Action at Law* further than by observing that the book must be read through, and carefully commonplace, twice at least, to insure an accurate retention of its contents. For the chapters on Error, Execution, and Arbitration,* I should say *three* perusals would not be too many. In conclusion, I will only add that, in order to be certain of a "pass" at your Final Examination, a somewhat intimate acquaintance with the whole of Smith's *Action at Law* is positively essential.

If the book I have just been speaking of is, from the nature of its subject, one of the most formidable in the law-student's library, certainly the next on my list is of a diametrically opposite character. In reading the admirable collection of lectures known as Haynes' *Outlines of Equity*, you will indeed frequently find yourself oblivious of the fact that it is professedly a legal treatise at all, so interesting is the subject upon which Mr. Haynes treats, and so elegant the literary style wherewith he has clothed it. It is quite unnecessary that I should offer any suggestions

* These chapters are omitted in the 12th edition. I miss the chapter on Arbitration very much (Editor's note).

as to the method you should adopt whilst perusing this work; I might as well give you directions how to read *Vanity Fair* or *Adam Bede*. But although Mr. Haynes' manner is more comparable to that of a very first-class novelist than to that of a dry lawyer, still you must remember that his matter is of a most instructive nature. The *suaviter in modo cum fortiter in re* was never better exemplified than in his case. Having read Haynes' *Outlines* once, because every articulated clerk does so, you will not fail to peruse it a second time entirely for your own pleasure; and you will find it gain on closer acquaintance.

Appended to Mr. Haynes' book is a "Statement of the Practice of the Court of Chancery,"* by Mr. Chapman Barber, of which I will only say that it is worthy to be enclosed within the covers of Haynes' *Outlines*. This "Statement" is as full of matter as an egg is of meat—every line imparts some useful information; and armed with a knowledge of the three works on equity—Smith, Haynes, and Barber—which I assume you to have mastered by the end of the fourth year, you will find no difficulty in comprehending the nature and objects of the different equitable proceedings with which you will be called upon to make acquaintance when in London next year. Most articulated clerks go through their six or eight months of attendance at "Chambers" in Lincoln's Inn with about the same amount of intelligent apprehension as a well-behaved Hottentot would evince under similar circumstances, and this merely because they leave their equity reading "until they have seen what the London Courts are like, you know." If you have paid only ordinary attention to what Messrs. Smith, Haynes, and Chapman Barber have been

* This is, of course, not necessary to be learnt, in regard to the alteration of the practice by the Judicature Acts, but the student ought to know something of the old practice (Editor's note).

telling you, your own experience in the town-agent's office will be of quite another character.

In the last chapter a few suggestive observations were offered upon the law of evidence. For the purpose of accompanying the examples of common-law actions therein given, I judged these to be sufficient; but it is now time that you should acquire a more extensive knowledge of this very important subject. Whilst conceding that its perusal is not absolutely essential for your preparation for the impending "final," I should nevertheless most strongly recommend that, at this stage of your studies, you read carefully through, once at least, Mr. Powell's *Principles of the Law of Evidence*. For reference in nice points of actual practice, the larger work of Mr. Taylor is perhaps, *more suo*, the better adapted; but for your needs as a student, I know of no book upon the subject that can bear comparison with Mr. Powell's. I have said that, for a "pass," it is not imperatively necessary for you to read any work upon "evidence" at all; still, if you are desirous of doing anything more than merely "scraping through" at the Incorporated Law Society—if you are ambitious of becoming really a *lawyer*, and not merely an *admitted attorney*, which is a very different thing—you may depend upon it that an accurate knowledge of the principles governing the admission and rejection of evidence will signally further your object. I therefore reiterate my advice as to reading Mr. Powell's work: a couple of months devoted to its study (alternated, of course, with statute-reading) will be anything rather than time lost.

I own to some diffidence in introducing to your notice Lord St. Leonards' work on *Vendors and Purchasers of Estates*, because I am fully aware both of its bulk and difficulty.* Yet, if read slowly, and at intervals during

* I should suggest the notes to Prideaux's *Precedents in Conveyancing* instead (Editor's note).

the last two years of your articles, I am by no means convinced that the task of mastering at all events its general outlines is one beyond your powers. Like Chitty on *Contracts* (which it exceeds, however, by about a third in size) it is replete with cases,—many of those cited being, as with Chitty, of a conflicting character; and this circumstance, although greatly adding to its value as a book of reference, somewhat detracts from its adaptability as a work for students. If you determine to form some acquaintance with this treatise—the master-work of a master-mind—and yet are dismayed by its great bulk, I should recommend the following selection from its contents; one, I may be allowed to add, made for my own purposes when reading for my final examination :

In the first place, read the short but pithy introduction with especial care,* noting, as a matter of course, anything which strikes you as new. Then skip the first and second sections of the first chapter (“What is an Auction?” and “Puffing”—the latter of which subjects is disposed of by the learned author’s Act of 1867), but read the remaining sections. The second chapter may be omitted altogether for the present. The whole of the third and fourth chapters (some 200 pages in all) must, however, be diligently read; the former treating in an exhaustive manner of the Statute of Frauds already read by you, and the latter “Of the Consequences of the Contract,”—perhaps to a student the most important portion of the entire work. The fifth and sixth chapters being for the present passed over, the seventh and eighth must be carefully read. The remaining

* In consequence of the great changes in the law of sales and mortgages introduced by Lord St. Leonards himself in 1859, it will be quite useless for you to read any edition of a date earlier than that year. The edition published in 1862 comprises all the recent alterations in real-property law up to the Declaration of Titles Act, and the alterations effected by the Vendors and Purchasers Act, 1874, must be carefully noted.

portion of the first volume, consisting principally of observations upon points of difficulty arising in the practical conduct of conveyancing matters, may be omitted until you have a fuller opportunity of perusing it. In the second volume, the second and third sections of the opening chapter (those treating upon the subjects of "Title by Descent" and "Title by Devise") should not be omitted, and as they occupy together but twenty pages, you will have no excuse for hurrying them over; the fifth section of this chapter ("Title by Non-claim") should also be read. A careful perusal of the whole of the fourteenth chapter ("Of the Construction of Covenants for Title") concludes the selection from Sugden's *Vendors and Purchasers* which I have made.

I am quite aware that in giving you the above advice I have laid myself open to the charge of presumptuously snipping and chipping to pieces a great and complete work. The necessity of the case must be my excuse for this apparent piece of Vandalism. With some portions of Lord St. Leonards' wonderful book, I think that you should, whilst yet an articled clerk, make yourself familiar; whilst as to others I have (perhaps erroneously) considered that your reading may be delayed until you are more completely master of your time. It is pretty certain that many articled clerks would be unable to find leisure for the due perusal of a work (putting its difficulty out of sight) of more than 1000 pages in extent; but I cannot recognise in that circumstance a reason forbidding them to read a small portion of the book—such as appears to me most applicable to their position as learners; indeed, I would only propose to *postpone* its complete perusal, not in the least to do away with the ultimate necessity for reading every syllable of it. The portions which I have above selected for your reading are those which I incline to consider the best adapted to your present wants; and if I have been mistaken, under

the circumstances, in attempting to make such selection for your behoof, I can only plead good intentions as my excuse.

I assume that you have, at an earlier period of your reading, perused the first and second volumes of Stephen's *Blackstone*. It is now time for you to complete your knowledge of the *Commentaries* of our most luminous legal writer. Fortunately, the text of *Blackstone* is less *exigeant* in character than that of Lord St. Leonards; its paragraphs do not require to be studied with quite the same closeness as the text of *Vendors and Purchasers*; and you may therefore hope to achieve a complete perusal of the later volumes of Stephen's *Blackstone* at a comparatively small expenditure of time. As a matter of course, I do not mean by this that you are to "run hastily" over the pages of the great commentator,—far from it. But at the same time,—and whilst bearing in mind that no law-book should be approached in the spirit in which one would take up a magazine article, the *Commentaries* do not require the same almost painful degree of attention which is demanded by Smith's *Action at Law* and Sugden's *Vendors and Purchasers*.

Your fourth year's course of reading will be well ended by a reperusal of the second chapter of Chitty on *Contracts*. You may, however, on the present occasion, without any great danger, omit studying those portions of the text which treat of contracts with insolvent debtors, corporations, commissioners of roads, &c. These eliminations will leave you only some hundred pages to master.

You may think, possibly, that the amount of reading which I have mapped out for you, together with the statutes of which a list is appended to this chapter, an unconscionable quantity of law to be encountered in one year. But when you recollect that you have already (supposing you have followed up my system) got into the regular "swing"

of work, as it were, and that this fourth year should be, according to my plan, the most studious period of your professional novitiate; when you further remember that the demands made upon your time by the office-work ought, in fairness to yourself, to be now somewhat lessened,—you must admit that, after all, the quantity of work prescribed is not so very great; and you will certainly, in time to come, reap the benefit of your present application.

The following is a list of the statutes to be read by you during the present year:—

- 6 & 7 Will. IV. c. 71, “Tithe Commutation Act.”
- 10 & 11 Vict. c. 96, “Trustee Act, 1847.”
- 12 & 13 Vict. c. 74, “Trustee Relief Act, 1849.”
- 13 & 14 Vict. c. 60, “Trustee Act, 1850.”
- 14 & 15 Vict. c. 52, “Absconding Debtors’ Arrest Act.”
- 15 & 16 Vict. c. 55, “Trustee Act, 1852.”
- 16 & 17 Vict. c. 83, “Succession Duty Act.”
- 18 & 19 Vict. c. 65, “Bills of Exchange Act.”
- 23 & 24 Vict. c. 38, “Real Property Amendment Act.”
- 28 & 29 Vict. c. 99, “County Courts Equitable Jurisdiction Act.”

And the Judicature Acts must now be thoroughly read and mastered, as also the Rules and Orders, which, with the assistance of Bedford’s *Guide*, will not be a very difficult though somewhat tedious process.

CHAPTER V.

THE LAST YEAR.

PART I.

The Last Year—Assignment of Articles—The Town-agent's Office—
 London professional life—The Courts—Pleading and Practice—
 Attendance at Chambers—Points to be specially noted.

HAVING passed four-fifths of your term of service in your principal's office, and obtained, by means of an attentive reading of approved elementary text-books, a competent general knowledge of the principles upon which English law is founded, the time has now arrived when it is fit you should see with your own eyes the actual every-day working of that great legal machine whose separate cogs and wheels you have already studied at home. This practical experience can be gained nowhere but in the metropolis; and only by visiting for yourself the various Courts and offices scattered between Westminster and Chancery Lane can you hope to become familiar (as it is needful you should be) with those forensic, judicial, and administrative proceedings which together form what is termed "the practice" of law. To further the accomplishment of this, it has been customary for many years past, for country solicitors to "assign" their clerks, for the last twelve months of their articles, to their London agents; and I will accordingly assume in this chapter that you have quitted your principal's place of business and are now in his town-agent's office, awaiting the time when you can yourself be admitted to practise.

The place wherein you are now located differs very

greatly from the country office in which your earlier years *in statu pupillari* were passed; and you will have to observe pretty closely, in the first instance, the internal economy of your new professional abode before the reasons for this difference will become apparent. Under the acts and orders regulating the practice of attorneys, you are already aware that it was requisite, in instituting or carrying on any proceedings in the superior Courts of law and equity, that the necessary steps should have been taken, in every case, by a practitioner carrying on business "within twenty miles of Lincoln's Inn." No writ could formerly have been issued, no pleadings filed, unless the same was indorsed with the name and address of some attorney or solicitor practising within that radius. It was therefore necessary that every professional man permanently resident without those limits should employ some other practitioner carrying on business within them, to transact all such matters on his behalf; and from that necessity arose the class of London solicitors called "town-agents." * These gentlemen have, generally speaking, private practices of their own in addition to the business with which they are intrusted by their country correspondents; and the town-agent has, in that case, two distinct classes of business—"agency" and "proper." In the former department are transacted precisely those matters concerning which you have as yet had no opportunity of being informed; and it is therefore the "agency" work of the office that you should exclusively regard during this your final year of pupillage.

The business which the town-agent thus carries on on behalf of his country correspondents is of three descriptions (following the divisions of the law itself)—conveyancing, common law, and equity. With regard to the first of these, the town-agent has not, under ordinary circumstances, a very important part to play; but still, in

* The district registries established under the Judicature Acts have materially affected town agency.

consequence of the public offices being in London, it continually happens that he has miscellaneous conveyancing business to transact for his correspondents. Thus, he has frequently to pass legacy-duty, residuary and succession accounts at Somerset House, on behalf of the executors, trustees, and beneficiaries, under wills and intestacies; and to him also falls the duty of obtaining probate, in all those cases where it is necessary that the will should be proved in the principal registry in London, instead of in the registry-office of the district wherein the testator had his place of abode. Another portion of the town-agent's conveyancing business consists in the obtaining registration of deeds in the Middlesex Registry; whilst various searches in conveyancing transactions also come within his province. To the town-agent likewise fell such special matters as the obtaining indefeasible titles under the Act of 1862;* enrolling disentailing deeds and charitable trust instruments in the Chancery Division; obtaining the assent of the Copyhold Commissioners, the Lords Commissioners of her Majesty's Treasury, and the Charity Commissioners for various purposes, and other business of a miscellaneous and somewhat undefinable character. The town-agent's proper province was, however, the transaction of routine business in the various common-law and equity offices. In all actions in London in the High Court of Justice, it devolves upon him to issue the requisite writs of summons and execution, to enter judgment, tax costs, and undertake the charge of numerous other matters belonging to the *administrative* progress of the cause: whilst his duties in regard to matters in which the Chancery Division has exclusive jurisdiction, the equity actions transmitted to him from the country, are yet more onerous, and may be defined, roundly, as extending to the whole of the *de cursu*, or routine proceedings, throughout the suit, as well as to

* Which act is now abolished (Editor's note).

many matters (such as proceedings in Chambers before the judges and their chief clerks) which do not come within that category. Indeed, as regards London Chancery proceedings, the "burden and heat of the day" might be said to have fallen almost entirely upon the town-agent: and many country practitioners are content still to leave the entire practical conduct of these important proceedings in the hands of their London delegate—or rather of his Chancery clerk. For this reason it will be to your advantage to devote the greater part of your time, whilst under assignment, to watching and taking part in the various Chancery matters going on in the town-agent's office, it being very unlikely that, once settled in country practice, you will ever again have so good an opportunity of becoming familiar with the conduct of actions in the Chancery Division. I therefore recommend you to divide the nine working months passed by you in London,* in the following manner: the first two months to be devoted to conveyancing (in the *agency*, mind, not the *proper* department of the office), then two months to common law, and the remaining five to equity. The lightest work falling in this wise during the earlier period of your stay in the office, you will have more time to look about you, and accustom yourself to your surroundings, than would be the case if you plunged *in medias res*, and commenced your London experiences by embarking in the intricacies of practice in the Chancery Division.

Having just noticed the principal descriptions of conveyancing matters transmitted from the country to the town-agent's office, I will now give a brief account of what has to be done in London in some of these cases; and this will, I hope, save you from a little confusion at first, and from the necessity of constantly asking minute questions as to the meaning of what you are doing.

* I. e., the twelve months under assignment, *minus* the ten weeks of the Long Vacation, and a fortnight or so at Christmas.

1. As to the payment of legacy and succession-duty. Legacy-duty is payable to government by the executors of a will, upon the bequests therein contained, at the expiration of the twelvemonth allowed them for realizing the testator's effects—or sooner, if they prefer it. For this duty, when paid, a receipt is given by the authorities at Somerset House, and the executors are entitled to deduct the amount shown on such receipt when settling afterwards with the legatees.* The amount payable to government is a percentage varying according to the propinquity or remoteness of the relationship between the deceased and the legatee, and ranges from 1*l*. per cent., payable by a “lineal ancestor or descendant,” to 10*l*. per cent., payable by a “stranger in blood,” the widow of a deceased person being, however, exempt from all legacy-duty. It is the business of the executors to see that the proper amount is paid in each case; and they are amenable to penalties if they fail to discharge their office in this respect. Succession-duty differs from legacy-duty in the following details: (1) it is payable upon real property and chattels real, and upon personal property *when settled in succession on different individuals*, either through the medium of trustees or otherwise—and not, as is the case with legacy-duty, upon immediate specific or pecuniary bequests; (2) it may be compounded for in advance; (3) it is payable by the beneficiaries or trustees (as the case may be) instead of by the executors. Both legacy and succession duties are payable at the Inland Revenue Office, Somerset House (or at one of its branch offices); the accounts must be made out upon printed forms supplied at the office, and gone over with the proper clerk, signed and “passed” by different officers, the amount paid in the “receiving office,” and a

* If the legacy is expressed to be given “free of legacy-duty,” the executors deduct the amount paid from the sum coming to the residuary legatee.

stamped receipt taken, this serving as a voucher whenever the matter is afterwards called in question.

2. Analogous to the above is the passing of "residuary accounts," which process also takes place at Somerset House. When all the assets have been got in, and the probate and legacy duties paid, it becomes necessary for the residuary legatee to render *his* account, showing in detail the balance coming to him, and the manner in which the result is arrived at; and, upon this residue, duty has likewise to be paid. These attendances at Somerset House are, I must admit, somewhat tedious, and occasionally rendered more so than is necessary by the obstructiveness of some of the subordinate officials; but still a series of interviews at the Inland Revenue Office offers a fine field for the exercise of temper and arithmetic; and it is as well to learn the details of all these matters in your own person.

3. As to probate. When it is desired to prove a will at the principal registry (which must be done whenever the deceased was not, prior to his demise, *permanently* resident within some one of the county probate districts), the necessary proceedings are taken by the town-agent. Wills are proved in two ways: (1) in *common form*, and (2) *per testes*; the former being resorted to in simple and uncontested, the latter in doubtful and contested, cases. Where a will is proved in "common form," the executor in the first place makes an affidavit as to the probable value of the deceased's personal property,* which is taken to the Inland Revenue Office; and thereupon, and on payment of the proper amount, a probate stamp is issued to the applicant. The executor then makes another affidavit (called "the executor's oath"), and one of the attesting

* Of course upon the realty no probate duty is payable; and if a testator happens to leave *nothing but* real property, there is no necessity for proving his will at all.

witnesses to the will also makes an affidavit verifying the execution of the will. These three affidavits, the probate stamp, the original will, and a copy engrossed on parchment, are then taken to the registrar's office at Somerset House; and after a short interval probate is granted. If the attesting witnesses are dead, or the executor is wrongly described, or the will is defaced or interlined, or if there are any other special circumstances in the case, the registrar will demand other affidavits accounting for those circumstances before he will admit the will to probate. Where the deceased has died intestate, letters of administration are granted at the same office to the party entitled to administration, upon his entering into a bond, with approved sureties, for the due administration of the intestate's effects. If an executor has died before his testator's assets are finally distributed, administration *de bonis non* is granted to his executor; or, if he has died intestate, to the next of kin of *the original testator*. If the executor named in the will is dead, or renounces probate, administration *cum testamento annexo* is granted. All these proceedings take place at the principal registry in Somerset House.

4. Searches for incumbrances, judgments, &c. (1) As to property situate in the county of Middlesex, a registry of all instruments affecting its title, &c. is kept in the Middlesex Registry Office, 12, Great James Street, Bedford Row, W.C. Whenever, therefore, a person is about to purchase, or to advance money on, any real property situate in that county, his solicitor, before completion, searches in that office in order to ascertain if there have been any dealings with the property undisclosed by the intended vendor or mortgagor. Short epitomes—called “memorials”—of every deed dealing with property in Middlesex (setting forth the parties, parcels, &c.) are brought to the office after the execution of the deed, and inserted in the appropriate books, of which an index is supplied for every year; and in these indexes

you have to search, on behalf of the purchaser or mortgagee, to ascertain that there are no concealed incumbrances. This process is essential in all such cases, because it has been authoritatively decided that whatever is contained in these books is to be considered as known to the party interested, thus throwing upon him the *onus* of inquiry. It is very tedious work searching in these innumerable volumes and bundles of plans; and I should not counsel you to consume too much of your time in the process, from which there is little to be learned; but you should go once or twice whilst in London, on the principle of seeing everything that is to be seen. (2) Searches for judgments take place at the Common Pleas Registry, Chancery Lane, and are, compared to those just named, very simple matters indeed. The object of searching in this registry is to ascertain if there are any unsatisfied judgments existing against the vendor or mortgagor; but owing to comparatively recent legislative enactments (see 27 & 28 Vict. c. 112), the registry will shortly cease to be of much practical importance. Its field of operations extends all over England and Wales.

The limits of this book forbid my entering upon any description of the more complicated conveyancing matters which have been mentioned as coming within the town-agent's province. Of these, as I have said, one of the most important was the registering of titles, under the Act 25 & 26 Vict. c. 53 (a lengthened and elaborate process),* the enfranchisement of copyholds through the aid of the Copyhold Enfranchisement Commissioners, and the obtaining the sanction of the Lords of the Treasury, the Charity Commissioners, and the Board of Trade for various purposes connected with municipal, educational, and other semi-public matters. To enter upon any of these excep-

* But, as this failed completely, the 125th section of the Land Transfer Act, 1875 (38 & 39 Vict. c. 87), prohibited further registration (Editor's note).

tional cases in detail would absorb too much of your time and my own space; and I therefore am compelled to leave them unnoticed.

The three common-law divisions of the High Court sit at Westminster Hall during "term" time for the hearing of demurrers and points of law reserved from *nisi prius*, and of various applications for rules. They also sit at the Guildhall and other places for the hearing of original causes, which are there tried in a somewhat similar manner to the assize causes, of which I have previously spoken. I might here mention that by the 26th section of the Judicature Act, 1873, "terms" are abolished entirely, so far as the administration of justice is concerned, and four "sittings" retaining the same names are substituted. Each of the Courts still retains to itself—in spite of the various reforms and modifications of practice since the year 1833 and the Judicature Acts—a certain *exclusive* jurisdiction. The Court of Queen's Bench differed from the other Courts in that it had an original *criminal* as well as a civil jurisdiction, and was alone entitled to exercise the remedies by *quo warranto* and *prerogative* writ of *mandamus*. The Court of Common Pleas had the exclusive right of entertaining appeals from the decisions of revising barristers, and of filing certificates of acknowledgment under 3 & 4 Will. 4, c. 74; and it was also the Court in which must be prosecuted the few *real* actions left by the Common Law Commissioners—the actions of dower and *quare impedit* as modified by the Common Law Procedure Act, 1860; whilst the Exchequer alone of the three Courts had power to determine (as Littleton has it) "causes concerning the sovereign's profit or revenue, as of debts and duties, honours, manors, franchises, hereditaments, goods and chattels of the sovereign;" and the exclusive jurisdiction of these Courts respectively was, by the 34th section of the Judicature Act, 1873, transferred to the same

divisions of the High Court. To each of the Courts are attached, besides the judicial staff, a body of ministerial officers,—taxing and sitting masters, judges' clerks, and others,—to all of whom are assigned separate and distinct duties. The proceedings in an action in any one of the Courts may be said to be of three kinds: (1) Those taking place in open Court, in the regular course of suit, before the judges, and also those motions and rules the proceedings connected wherewith take place in Court in term time; (2) those interlocutory matters dependent (theoretically, at least) upon the pure discretion of the judges, and exercised by the latter and (under the new orders) by the masters sitting in Chambers; and (3) those formal and regular steps which are taken at the offices of the masters of the different Courts. As instances of the first of these three classes may be mentioned—the arguing of *demurrers*, special cases, and points reserved at *nisi prius*, and applications for new trials; of the second, summonses and orders for time to plead, for better particulars, &c.; whilst of the last, the regular pleadings, the issue of various writs, and the taxation of costs, are familiar examples.

As you will now have, whilst in the agent's office, an opportunity of seeing a multiplicity of pleadings of different descriptions, I think it as well here to offer you a brief general *résumé* of the former rules of pleading in civil actions; a subject concerning which neither Smith's *Action at Law* nor the *Manual of Common Law* have given you any detailed information. As formerly in force under the Common Law Procedure Acts, 1852 and 1854, and the pleading rules of Trinity Term, 1853, the following is a short summary of the more important rules which, until the Judicature Acts, regulated common-law pleading in the three superior Courts.

1. Several counts on the same cause of action were not allowed under the old practice.

Example: Declaration stating (1) that the plaintiff sued the defendant for 25*l.* for goods bargained and sold to the defendant; and (2) that the plaintiff also sued the defendant, *as the agent of a third party*, for the 25*l.* for goods sold and delivered. This second count would probably have been struck out upon application to a judge at Chambers.*

The judges would, however, have always allowed several counts to the declaration "when they appeared to be proper for *determining the real question in controversy* between the parties on the merits."

2. Several pleas, replications, &c. founded on the same ground of answer or defence were not allowed without leave.

Example: Declaration in *assumpsit* for breach of promise of marriage. Defendant pleaded (1) the general issue (*non assumpsit*); and (2) that the plaintiff was a woman of loose and debauched life, wherefore he the defendant, &c. Before these two pleas could be pleaded together, a "summons to plead several matters" must have been taken out in Chambers, served, heard by the judge sitting in Chambers, and an order granted. The judges always allowed double pleading, where it appeared "proper for determining the real question." If no such order had been obtained, the second plea would have been at the risk, as to costs, of the party pleading it; and even if he had succeeded at trial on the general issue, he might have had to pay the costs occasioned by the unauthorized pleading.

3. In actions of *assumpsit*, the plea of *non-assumpsit* only operated as a denial in fact of the promise alleged, but not

* Because, as a general rule, if the defendant were personally liable at all, it would not matter to the plaintiff whether as agent or principal, but under the new pleading rules of the Judicature Acts it would be taken the principal entered into the contract and not the agent.

of any collateral matters, which must have been specially pleaded.

Exempli gratia: Declaration that the plaintiff sued the defendant for 1,000*l.*, money due on a policy of insurance on A.'s life: plea *non-assumpsit*; the plea merely put in issue the "subscription of the alleged policy by the defendant," but not any collateral matters—such as a denial that the plaintiff had, at the time of the insurance, the necessary pecuniary interest in A.'s life. If this question was to be raised, an order "to plead several matters" must have been obtained, and the plea specially pleaded.

4. In actions upon bills of exchange the pleas "*non assumpsit*" and "never indebted" were not allowed.

If the action is brought under the Bills of Exchange Act, 1855, of course the defendant could not, and indeed cannot, plead at all without special leave. Supposing, however, from any cause (such as the bill being more than six months overdue, for instance) an ordinary indorsed writ of summons was issued, and the plaintiff in due course (i.e. after defendant's appearance) declared,—in such case a special plea traversing the declaration must have been pleaded in defence,—such as that the bill was never presented for payment, if the defendant was the acceptor, or that no notice of dishonour had been given, if he was the indorser.

5. In all actions *ex contractu* (whether on specialty or simple contract) every matter in confession and avoidance must have been specially pleaded.

This rule requires no explanation. Infancy, coverture, release, accord and satisfaction, illegality of consideration, contract being in general restraint of trade, &c., are a few examples of "matters in confession and avoidance."

6. In actions on specialties (that is, instruments under seal) and covenant, the plea *non est factum* only operated as a denial of the execution of the deed, and all other defences must have been specially pleaded.

Non est factum was the "general issue" in actions of covenant, just as *non assumpsit* was in actions on simple contracts. If the plaintiff's declaration stated that the defendant by such and such a deed covenanted to keep a certain road in repair, the plea *non est factum* would merely have put in issue the fact of the execution by the defendant of the instrument declared on. If the real defence was (for example) that by a subsequent deed* the plaintiff discharged the defendant from his liability under the former specialty, this second deed must have been specially pleaded by the defendant.

7. The plea of *nil debet* was allowed under the old practice.

This was an ancient plea, abolished by the rules of Trinity Term, 1853. In actions of debt, or *indebitatus assumpsit*, the plea "*nunquam indebitat*" ("the defendant never was indebted as alleged in the plaintiff's declaration") must have been pleaded.

8. Where the plaintiff in his particulars of demand had given credit for sums paid by the defendant, the defendant was not to plead "set-off" as to those sums.

The operation of this rule was alluded to in the action of *Stubbs v. Furnival*, *ante*, Chap. I.

9. Payment might not have been given in evidence, but must have been pleaded in bar.

The meaning of this was, that if the defendant wanted to set up payment as a defence to the action, he must have pleaded it in bar, *otherwise* he would not have been allowed to give it in evidence. Of course, payment having *first* been specially pleaded, the fact was *afterwards* established by the defendant's evidence, in the same way as any other plea.

10. In actions of *detinue* the plea of *non detinet* only operated as a denial of the detention.

* A *parol* discharge would, of course, have been ineffectual.

Non detinet was the "general issue" in *detinue*: see the observations above in the cases of *non assumpsit* and *non est factum*.

11. In all actions of *tort*, matters in confession and avoidance must have been specially pleaded, as in the case of actions *ex contractu*.

12. In actions of *tort*, the "general issue"—"not guilty"—only operated as a denial of the commission of the act. Facts stated in the *inducement* of the declaration must have been specially pleaded to.

Example: Declaration in *libel*, *per quod amisit* (that was where the damage suffered by the plaintiff was the gist of the action) the defendant's plea of "not guilty" only put in issue the publication of the libel, not the special damage arising therefrom.

13. In actions of trespass *quare clausum fregit* the "close" must have been designated and described fully in the declaration, with its abutments, &c.

The reason for this rule was, that it obviated the danger of the defendant's mistaking the particular acts of trespass complained of, thus doing away with the necessity for a "new assignment."

14. A plea containing a defence arising after the commencement of the action might have been pleaded with a plea arising before such commencement.

The above represent the principal rules of pleading formerly in force. For a fuller exposition of this most important subject I shall hereafter refer you to Mr. Watkin Williams' valuable work on *Pleading*.

I have allowed the foregoing pages on pleading to stand, because I am of opinion that you should be thoroughly acquainted with the important alterations which have been made by the Judicature Acts. All that is technical has been sought to be avoided, and as my pleader one day remarked,

you "must not now lie technically but specifically,"—he meant that, under the new pleading rules, every paragraph in the statement of claim, if denied at all, must be denied in plain simple language, and words must be taken literally to imply what they seem to. Thus, as we find in the 2nd edition of Messrs. Lely and Foulkes' *Judicature Acts*, if you plead "not guilty" in an action of libel, you must be taken to state that you did not actually speak the words with which you are charged, and such a plea is not to infer that, because you choose to consider the words privileged, therefore you are not guilty of the libel alleged. I will now endeavour to point out, as far as possible, the alterations made by the pleading rules, under the recent acts and rules, which are all fully set forth in Bedford's *Guide to the Judicature Acts*. With reference to the preceding paragraph, counts are now abolished, and every pleading must now contain, as concisely as possible, a statement of material facts, but not the evidence by which they are to be proved, divided into paragraphs numbered consecutively, and each paragraph containing, as nearly as may be, a separate allegation of the subject-matter. But where the plaintiff seeks relief in respect of several distinct claims or causes of complaint, founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly; and the same rule applies where the defendant relies upon several distinct grounds of defence, set-off, or counter-claim, founded upon separate and distinct facts. And where any defendant seeks to rely upon any facts, as supporting a right of set-off or counter-claim, he shall, in his statement of defence, state specifically that he does so by way of set-off or counter-claim. The plaintiff may, however, unite in the same action and statement of claim several causes of action, subject to the judge ordering separate trials; but it must be remembered that no cause or action can be joined with an action for recovery of land, save an action for mesne

profits or arrear of rent in respect of the premises, or damages for the breach of any contract under which the same are held, and claims by a trustee in bankruptcy, cannot, unless by leave of a court or judge, be joined with any claim by him in any other capacity; and any defendant alleging that the plaintiff has united in the same action several causes of action, which cannot be conveniently disposed of in one action, may at any time apply to the court or a judge for an order confining the action to such of the causes of action as may be conveniently disposed of in the same proceeding. The general issues have now no more sense than the very words used in the ordinary sense would imply, save in the case of "not guilty by statute," which has the same effect that a plea of not guilty by statute has heretofore had, *i.e.* it puts in issue not only the defences peculiar to the statute under which it is pleaded, but all that would have arisen at common law. It is, moreover, not sufficient for a defendant, in the statement of defence, to deny generally the facts alleged by the statement of claim, or for a plaintiff, in his reply, to deny generally the facts alleged in a defence by way of counter-claim, but each party must deal specifically with each allegation of fact of which he does not admit the truth; and when a party, in any pleading, denies an allegation of fact in a previous pleading of the opposite party, he must not do so evasively, but answer the points in substance. But where a contract is alleged in any pleading, a bare denial of the contract is construed only as a denial in fact, and not of its legality or its sufficiency in law, whether with reference to the Statute of Frauds or otherwise.

Neither party need, in any pleading, allege any matter of fact which the law presumes in his favour, or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied, *e.g.* consideration for a bill of exchange where the plaintiff sues only on the

bill and not for the consideration, as a substantive ground of claim.

With regard to the plea of *non est factum*, the practice will, doubtless, be substantially the same as under the old practice. It will only deny the execution of the deed, and all other defences must be specially pleaded; and payment clearly may not now, upon the construction of Order XIX., rule 18, be given in evidence in reduction of damages,—it must still be specially pleaded or alleged. No new assignment is now necessary or used, but everything which formerly was necessary to be alleged by way of new assignment is now introduced by amendment of the statement of claim. No plea or defence can now be pleaded in abatement; and where any ground of defence arises after the defendant has delivered a statement of defence, or after the time limited for his so doing has expired, the defendant may, and where any ground of defence to any set-off or counter-claim arises after reply, or after the time limited for delivering the same, the plaintiff may, within eight days after such cause of defence has arisen, by leave of the court or judge, deliver a further defence or further reply, as the case may be, setting forth the same, the effect of which plea was formerly to waive the anterior defence, and to put the action in the same state as if it had been originally pleaded. Now the plaintiff may deliver a confession of such defence, and sign judgment for the costs up to the pleading of such defence, unless the court otherwise order.

Such is a very imperfect outline of the new pleading rules, and I can only, in addition, refer the student to the rules themselves, which he will find principally contained in Order XIX., and the forms in the appendix to the rules, which are printed at the end of any of the text-books on the Judicature Acts.

As I assume that you have already attended the *nisi*

prius trials in your own town, it is not necessary that I should here offer any observations upon the Guildhall and Middlesex sittings, which differ merely in certain small details of routine from the practice prevailing at the trials of country causes. With the sittings in the Divisional Courts, with proceedings in judges' chambers, and with the practice at the masters' offices, your provincial training has, however, failed to acquaint you; and I therefore propose concluding this section of my subject with a few remarks upon the procedure in these cases. The sittings in the Divisional Courts are held during term time in each of the three divisions, before two of the judges sitting to hear points of law argued, and from whose decision an appeal lies to the Court of Appeal, and thence, with leave, to the House of Lords. The matters debated and decided upon before and by the Divisional Courts may be divided into two species: (1) special cases and points reserved; and (2) proceedings by motion and rule.* In Smith's *Action at Law* you have already read a full description of a demurrer—its nature, and the mode in which it is heard by the court. This precludes me from the necessity of doing anything more here than merely advising you to refresh your memory with the portion of Mr. Smith's book treating upon this subject before attending any of the courts at Westminster in order to hear demurrers argued and decided upon. The procedure by motion and rule was the authorized method of invoking the *summary* jurisdiction of the courts, and was exercised at the sittings *in banco*. This procedure may be shortly stated. When the summary jurisdiction of the court was sought to be resorted to in a pending matter, an affidavit was drawn up, headed with the title of the cause, and setting forth the matters autho-

* By the rules of December, 1876, demurrers are to be heard by a single judge, and rules or orders to show cause are not now usually granted, except in cases of motions for new trials (Editor's note).

rizing the application about to be made. This affidavit (being duly sworn) was filed in court, and a copy furnished to the counsel who was to *move* in the matter. On the next motion-day counsel accordingly appeared and moved, reading such portions of the affidavit as he considered necessary. The objects sought to be effected by motion were those which, owing to their importance, a judge at chambers had no power to order,—such as applications for new trials, and the like. At the conclusion of counsel's argument the senior judge present (on behalf of himself and the others) either refused the application altogether or granted a rule *nisi*. "A rule *nisi* is a rule calling on the party against whom the application is made to show cause to the court by a certain time why the matter applied for should not be ordered to be done; after which time, if no cause, or no good cause be shown, the court will make the rule *absolute*."* The rule, being thus granted, was afterwards drawn up by the sitting master, and served by the solicitor of the party obtaining it upon the opposite party, who, on the day named in the order, appeared by his counsel to oppose it. If the latter failed to convince the court, or if no counsel appeared to oppose the rule at all, a rule *absolute* was then granted.

It now remains to notice briefly the practice at the masters' offices, and at judges' chambers respectively. The matters of business transacted at the masters' offices are as follow: (1) the issuing and renewal of writs of summons and for leave to issue execution; (2) the entering of appearances; (3) the subsequent filing of affidavit of service and statement of particulars, where this was necessitated by the non-appearance to a writ unindorsed specially, but for a debt or liquidated demand; (4) the entering of judgment; (5) the issuing of writs of execution—*fi. fa.*, *elegit*, writ of delivery, *fi. fa. de bonis*

* Watkin Williams' *Introduction to Pleading*, p. 34.

ecclesiasticis, &c.; (6) the taxation of costs, &c., in certain cases. All these matters are transacted by the masters and their clerks, without the intervention of the judges. A couple of weeks' attendance at one of the masters' offices will sufficiently familiarize you with the practice.

Certain applications of a *discretionary* character, and yet not of sufficient importance to be made the subject of motions in open court, are heard by the judges, and (under the recent orders) by the masters, at the judges' chambers at Rolls' Gardens, Chancery Lane. All proceedings taken at chambers are carried out by means of *summons and order*, which there take the place which motion and rule occupy before the court. Applications *incidental* to the cause, and arising during its progress, are made at chambers; and it may be said generally, that whenever either party requires any grace or concession, or special exemption from the operation of the strict rules of practice and pleadings, he must have recourse to the jurisdiction at chambers. A summons is first taken out (this is issued by the judge's clerk) naming a time for the matter to be heard: the summons being served on the opposite party, the matter is heard on the day appointed by a judge, or one of the masters sitting at chambers, and an order either granted or refused. Whilst motions to the court *must* be made by counsel, who have exclusive audience both at the sittings in the divisional courts and at *nisi prius*, solicitors and their clerks are heard in chambers. Indeed, it sometimes happens, in small offices where only a limited staff is employed, that a copying clerk or errand boy is sent down to chambers for the purpose of persuading the judge to grant some very debateable and discretionary application; and (until the judges, very properly, got weary of the state of things, and refused to hear lengthy arguments at chambers) one might occasionally behold the edifying spectacle of a lad of tender age refreshing his memory by reference

to a slip of paper whilst pertinaciously demanding some concession from the judge, of the very nature whereof the juvenile applicant was completely ignorant. I have even heard (though I do not vouch for the truth of the anecdote) that an office-boy once applying to the late Mr. Baron Alderson for a "garnishee order," and meeting with glib opposition from another errand-boy, representing the other party, then and there had recourse to natural weapons, the two engaging in a pugilistic encounter of considerable duration and ferocity before the representative of her Majesty, who, convulsed with laughter, was unable to interfere. Although such scenes as this are now rarely, if ever, witnessed, still the class of clerks sent from the agency-offices to represent the interests of country clients is such as renders contact with them beyond the actual precincts of chambers, as a rule, undesirable. I should counsel you, this notwithstanding, to devote a month during the early part of your stay in town to attendance at chambers, since you will there learn a great many points of practice which it is impossible to gather from any book, and which may be of great use to you when a full-fledged "country practitioner." I suppose I need hardly tell you, that if whilst thus engaged you are invited to partake of refreshment at adjacent public-houses, or if the (not always immaculately clean) right-hand of fellowship is otherwise extended to you by the clerks whom you from time to time meet at chambers professionally, it will be advisable to decline all such proffered hospitality.

I will conclude the first part of this chapter by attempting to afford you some slight idea of the different proceedings in the Chancery Division, which you will now be enabled from time to time to view whilst in the town agent's office; and with all of which it is to the last degree important that you should become acquainted without loss

of time. The Chancery Division of the High Court is constituted as follows :—The Lord High Chancellor president, the Master of the Rolls, and the three Vice-Chancellors, with the chambers attached to them, and Mr. Justice Fry. The Vice-Chancellors and the Master of the Rolls hear and determine upon all matters coming before the Court of Chancery by action or petition. The business is transacted by the Master of the Rolls, the Vice-Chancellors, and the Justice,* themselves sitting in open court, and by those judges and their chief clerks sitting in chambers: the generic division of business between court and chambers following pretty much the same rules as in the superior courts of common law. Before the Lords Justices of Appeal are heard appeals from the decisions of the Master of the Rolls and the Vice-Chancellors and Justice from the Common Law Divisions, and appeals from the Chief Judge in Bankruptcy; but no causes come before them in the first place (their jurisdiction being purely appellate), and they do not sit in chambers. The Lord Chancellor also sits, as president of the Chancery Division, with the Lords Justices of Appeal, as an *ex officio* judge of the Court of Appeal. The House of Lords is the supreme court of ultimate appeal, and alone has jurisdiction to reverse the decisions of the Court of Appeal. †

These are the different courts in which public proceedings take place; but, as in the case of the common law divisions, there are also various minor but important *discretionary* proceedings carried on in chambers, and a great mass of *formal* matters transacted in the six clerks' office in Chancery Lane (now called the Record and Writ and the Report Offices) by the record and writ clerks, the registrars, the

* No cause is originated before Mr. Justice Fry, but causes are transferred to him for the purpose only of trial or hearing. (Order 19th June, 1877.) (Editor's note.)

† The House of Lords and the Court of Appeal now constitute the appellate portion of the Supreme Court (Editor's note).

examiners, the taxing-masters, and the paymaster-general, and their staffs of subordinates. The enormous amount of business daily transacted at the Record and Writ Office (which in itself, amongst other things, fulfils in Chancery proceedings the functions allotted to the three masters' offices at common law) astounds a country-bred clerk on his first introduction to it. The six clerks' office—a roomy edifice, which has existed almost in its present architectural state for some two centuries past—is divided and subdivided into almost innumerable departments, in each of which some distinct portion of the great Chancery web is spun from day to day. Your first object should be to acquire a distinct notion of what goes on in each of these departments; and (with Barber's *Statement* and Bedford's *Outline of a Suit in the Chancery Division*, recently learned, firmly impressed on your mind) you should accordingly, for not less than two months, accompany the Chancery clerk—who is almost always an intelligent man, and can help you signally, if inclined to be communicative—on his expeditions to and from the Record and Writ Office. As at this stage of your studies your evening reading will be almost entirely given up to the portion of Ayckbourn relating to Chamber practice, the attainment of this knowledge by you should be unattended by any great difficulty; indeed, by keeping your eyes open, and inquiring the why and wherefore of the office Chancery clerk, wherever practicable, you can hardly fail before many weeks are over to be tolerably well informed with respect to that routine work which, on account of its great extent and variety, has so (to use a homely expression) “dumbfounded” you on your first introduction to it. Keep distinctly in mind the different functions of the different officials:

1. The Lords Justices of Appeal, who hear appeals in open court.

2. The Master of the Rolls and Vice-Chancellors, who

hear original applications coming on by motion and petition also in open court; the same judges also sitting in chambers for the purpose of disposing of various incidental matters arising during the progress of the cause.

3. The chief clerks of the last-named judges, who sit in chambers, and enter upon all matters of account, &c., reporting the conclusions they arrive at in every case to their superiors, in the form of a certificate; the judge himself, whilst sitting at chambers, being always open to reconsider the matter in the case of either party being dissatisfied with the chief clerk's decision.

4. The registrars, who sit in courts to which they are respectively attached, and enter the minutes of the various judgments and orders pronounced from the bench; and who further, in their own offices, when the judge is not sitting, regularly draw up, pass and settle such judgments and orders, besides entering the causes coming on for hearing in different stages in their cause papers and books, and performing a variety of similar administrative duties.

5. The examiners, who sit at their chambers in Chancery Lane, and take down the evidence which is afterwards to be presented to the court.

6. The masters of entries, who issue copies of the different proceedings filed in the report office.

7. The taxing masters, who have an extensive authority in respect of the bills of costs in the Chancery proceedings.

8. The paymaster-general, who has the exclusive management of all the funds belonging to suitors deposited in the Chancery Division pending proceedings; which funds he invests in government stocks, and banks in the Bank of England, according to the orders of the court.*

* 35 & 36 Vict. c. 44. The Chancery Funds Act must be read (Editor's note).

9. The record and writ clerks, who issue and seal writs, enter appearances, file affidavits and all other pleadings, &c.; amend the same from time to time, as directed by the judge's orders; enter consents, and notes of service; make out all necessary certificates as to the state of the pleadings; receive the fees payable (by means of stamps) in all these proceedings; and, in fine, transact nearly the whole of the purely routine business of the Court of Chancery.

Having familiarized yourself with the duties performed by these various judicial and administrative officers, you should next become thoroughly acquainted with the different modes in which the assistance of the courts is asked by the suitors. For this purpose, you must study the distinction which exists between petitions and motions, and learn in what manner each must be presented to the court. To acquire an adequate idea of these and other matters of practice, it is necessary that you should constantly attend the courts in Lincoln's Inn whilst sitting. You must also, whilst in the agency-office, lose no opportunity of becoming familiar with the forms of the different instruments—old bills of complaint,* interrogatories, answers, exceptions, new writs, petitions, affidavits, demurrers, pleas, special cases, receivers' and trustees' accounts—used in the various proceedings during the progress of a suit in equity.

It is a very good plan to get hold of the papers in a particular cause, arranging them in the order of their dates, and going through them from beginning to end, entering copious notes of the different proceedings in your commonplace-book. On explaining your object to the Chancery clerk, he will probably give you some papers in a matter just completed, which consequently require sorting and

* It is well for the student to see the form of the old bill of complaint, &c. (Editor's note). See next page.

arranging chronologically, and are therefore very fit for your purpose. Having satisfied yourself, in the first instance, as to the nature of the action—which you may readily accomplish by steadily perusing the papers—you should then, having previously arranged the various documents, sit down with a blank sheet of paper beside you, on which to take notes of the proceedings (for subsequent transfer to your equity commonplace-book), somewhat after the following manner :

THE OLD SUIT OF MOTION FOR DECREE.

Example : Brooks *v.* Hassall and others.

1. Bill of complaint, filed 1st January 1867 (1*l.* stamp), praying that plaintiff might be declared entitled to the residuary personal estate of John Williams, upon the construction of his will.

N.B.—Mrs. Brooks being a married woman, and the subject-matter of the suit being her *separate estate*, the bill was filed in her name by Smith, as *prochein amy*. The defendants were Hassall (Williams' executor), Johnson (Williams' next of kin), and Mrs. Brooks' husband (the latter being a "formal defendant").

2. Copies of bill (two indorsed and one plain) served on defendants, January 10th.

3. Appearance by all defendants within the eight days limited after service. (Had any of the defendants failed to appear, the plaintiff might have entered an appearance for them.)

4. Interrogatories for examination of defendants. Hassall and Johnson served 20th January 1867. (Within the eight days limited after defendants' appearance.)

5. Defendants Hassall and Johnson file their answers

within the fourteen days limited after service of interrogatories.

6. Plaintiff files exceptions to Hassall's answer, for insufficiency, within six weeks after answer filed.

7. Exceptions set down for hearing within fourteen days after exceptions filed.

8. Exceptions argued before judge, and allowed.

9. Motion for decree (one lunar month's notice) supported by affidavit. A list of the affidavits proposed to be used by the plaintiff was appended to the notice of motion.

10. Notice of motion served, entered with registrar, and set down for hearing on 10th March.

11. Defendants filed their affidavits in answer to the plaintiff's within fourteen days after service.

12. Motion heard on day appointed, and decree pronounced for plaintiff, but without costs.*

It is obvious that the proceedings in different suits are infinitely various. The *interlocutory* proceedings may be, and often are, carried to great length, and are sometimes very complicated, especially when there are several defendants, each appearing, pleading or demurring by a separate solicitor. The proceedings in different suits also varied in their *general outline* (apart from incidental and interlocutory matters), according as the suit was by "bill and answer," "motion for decree," or "replication." I should counsel you, whilst reading Ayckbourn, to have before you (if practicable) a set of papers illustrative of the particular class of proceedings you are reading up. The Chancery clerk will help you in this. Besides suits commenced in the

* It is to be noted that costs (which used at common law to follow the event) are in equitable suits entirely in the discretion of the judge.

The student must now remember that the Chancery practice is now assimilated to the common law as much as possible, save the proceedings in the chief clerk's chambers (Editor's note).

regular and ordinary form of writ of summons, you must also recollect that there are a vast number of applications to the court made by means of petitions and summonses; these being the modes of procedure pointed out in various cases by special legislative enactments. An administration-summons is a very familiar instance of this class of proceeding, which commences and is carried on in chambers, and (except under very special circumstances) never comes before the court in its public sittings at all. And be prepared with the outline of the steps for winding up a company: for which purpose you must read the Companies Acts of 1862 and 1867.

It is a necessary consequence of the great complexity and multifariousness of proceedings in the Chancery Division that, whilst ordinary parts and fair application will make a student in a comparatively short time acquainted with the details of practice in the Common Law Division, it requires a long and tedious apprenticeship to become thoroughly conversant with all the practice of the Chancery Division.* Thus, although for the purposes of your examination, and also as a sort of mental discipline, it is expedient that you should devote the larger portion of your time, whilst under assignment, to the consideration of Chancery practice, still you must not be discouraged if, even when out of your articles, you are yet only very partially informed on the subject. Practical experience of the conduct of equity cases will alone make you thoroughly *au fait* with what, after all, you will be sure to leave more or less in the hands of your town-agent when once settled in country practice. At the same time, this last circumstance should not operate to prevent your devoting your best energies to the acquisition of Chancery practice whilst temporarily resident in London; and for this purpose, in addition to your reading,

* The chamber work is intricate and puzzling (Editor's note).

it is very necessary that you should continually frequent the different courts, the Writ and Record Office, and the chambers of the Vice-Chancellors and the Master of the Rolls, and carefully watch the different business-matters there transacted.*

With these few and meagre hints I must now leave you to your own devices, conscious of the slightness of the service I am rendering you at this stage of your studies, but conscious also of the impracticability of attempting more in this direction. It has been before said that the old maxim, "There is no royal road to learning," applies as well to law as to any other science, mixed or pure; but if there is any one department of legal knowledge which this adage fits more than another, it is Chancery practice; and in acquiring a knowledge of its details, personal diligence on your own part is indispensable. Without this all advice is given in vain.

* The Judicature Acts, assimilating the practice so far as writs of summons, statement of claim, defence, reply and judgment are concerned, have done much to assist the student; and do not let him forget the exclusive jurisdiction assigned to the Chancery Division under sect. 34 of the Judicature Act of 1873 (Editor's note).

PART II.

Course of reading for the Fifth Year—Ayckbourn's *Chancery Practice*—Watkin Williams on *Pleading*—Smith and White and Tudor's *Leading Cases*—The Statute law (concluded).

It is unfortunately too much a habit amongst articled clerks to read but little—perhaps not at all—during the period which intervenes between their Intermediate examination and their assignment to the town-agent. The necessary consequence of this is, that during the last year they are compelled to work harder than is good for them to make up for lost time. Wearied mentally and physically with a long day's attendance at chambers, these force themselves (impelled by a sense of the perilous nearness of the Final Examination) to work far into the night, reading up subjects which they ought long before to have mastered. This mistaken course of proceeding often results in a total "breakdown" as the ordeal itself draws near; and, indeed, I am inclined to attribute at least one-half of the ignominious "plucks" which every succeeding term witnesses in the hall of the Incorporated Law Society solely to this extreme eagerness of articled clerks, at the fag-end of their pupilage, to cram three days' work into one. Nothing can be more foolish than such a course of proceeding. The conscientious student has during his stay in London so much to occupy his undivided attention in the day-time, that heavy night-work is worse than inexpedient. From nine in the morning until six or seven at night his mind will be constantly employed in observing the details of town practice. There is a limit to mortal endurance; and if he afterwards "wastes the midnight oil" to any great extent, he may find the lamp within him grow

faint and dull and flickering. It is not given to everyone to possess the *mens sana in corpore sano* in such perfection as Mr. Whyte Melville's muscular heroes; nor can I bring myself to consider that a long day mainly spent at the Writ and Record Office and the Vice-Chancellors' chambers is at all a fit preparation for a night devoted to Stephen, Chitty, and Sugden. If, indeed, you have pursued the plan I have ventured to recommend,—according to which the hardest reading falls at the time when hard reading is easiest, that is to say, during the third and fourth years under articles,—you will find it quite unnecessary to resort to the thousand-and-one expedients of green-tea, wet towels, alcoholic stimulants, and what not, which some fifth-year students are, by reason of their previous idleness, forced to adopt. In a word, I should counsel you, during the time you are actively engaged in the town-agent's office, not to read more than *three hours a night*, and that only on alternate evenings. If even the epicure complained of unintermittent partridges, you, as a law-student, after a day's work at Chambers, may with still more reason exclaim with Sir Henry Spelman, "*Excidit mihi, fateor, animus!*" on viewing a pile of books awaiting your return at your bachelor lodgings.

The books which I suppose you have attentively read previous to your arrival in town can hardly fail to have grounded you satisfactorily in the theory and practice of conveyancing, and in the principles of common law and equity. There remains, therefore, only the practice of the courts in London to be acquired, and, even here, the ground will have been prepared by Smith and Barber. Ayckbourn's *Chancery Practice* and Watkin Williams on *Pleading** are the two books which I recommend you to

* I have let these two books stand because, doubtless, there will be new editions; and, if so, I feel certain the student cannot do better (Editor's note).

study during your last year for equity and common-law practice respectively. Mr. Ayckbourn's treatise is a very admirable one. Particularly to be commended is the manner in which the practical steps in every proceeding are recapitulated (in *italics*) at the end of the paragraphs treating of each special matter, this method being well calculated to arrest the attention of the student, and fix the details in his memory. It is not to be disguised from you that Ayckbourn is "hard reading." Particularly at the first start, before you have had time to see that Chancery practice, in all its multifarious divisions, follows fixed and certain rules, applicable to all sets of circumstances, the task of getting up the routine proceedings by heart may appear almost hopeless. As you read on, however, the difficulties will gradually clear away almost of themselves: one chapter being mastered will facilitate the learning of the next; and whereas the first thirty or forty pages may have taken you almost as many days to read, yet as you get deeper into the book, and observe the real uniformity prevailing in all these diverse proceedings, you will find yourself getting over the ground with gradually quickening strides. Indeed, after mastering the preliminary proceedings, and separating (by a careful analysis) the *incidental* and *interlocutory* matters from the ordinary progress of the action, Ayckbourn will scarcely be more difficult to read than Barber,—less so than Smith's *Action at Law*, where one chapter of necessity fails to prepare you for the next following. Of course you must make a copious analysis as you go, and equally, as a matter of course, must "post up" your equity common-place book at convenient stages. If you have followed my advice with reference to Chapman Barber, you have already at hand a condensed statement of the *outlines* of practice. These have now to be filled in from the pages of Ayckbourn; and you will find it a great help to have Mr. Barber's statement before you whilst

reading Ayckbourn, for the purpose of showing at a glance a skeleton outline of the proceedings, of which the latter author treats in detail. Supplemented by a weekly "exam." (yourself being at once examiner and sole candidate), this course persevered in for six months will be quite sufficient, added to your practical mornings' work, to give you a very fair insight into equity practice.

The only other regular treatise to which I now think it necessary to direct your attention is Watkin Williams on *Pleading*. This work is, I believe, the only one published which treats in anything like an elementary form of the rules regulating the pleadings in the common-law courts.* The six earlier chapters of Mr. Williams' book discuss the same subjects as Smith's *Action at Law*, and therefore need not take up much time in reading; but the middle and later portions of the work treat in detail of matters which Smith has only cursorily noticed, and therefore deserve a very attentive perusal. The rules of pleading, which you will find in Mr. Williams' Appendix, should be learned almost by heart. Although in the old days of special pleading a solicitor might be content to leave these matters to his pleader, at the present time a knowledge of this subject is essential to every practitioner, since it is no longer practicable to prop up your ignorance of pleading by a continual reference to counsel.

Mr. Ayckbourn's and Mr. Williams' books will occupy your evenings for eight out of the last twelve months of your articles. The remaining four months may be worse spent than in reading some of the cases in Mr. Smith's and Messrs. White and Tudor's collections,—the former containing the leading cases in common law, and the latter in equity. As you will not have time, however, to thoroughly

* Mr. Stephen's and Mr. Chitty junior's valuable works are, perhaps, more suited to the practitioner than the student.

master the whole of these volumes, I here append a list of those cases to which the examiners occasionally refer, and which I deem amongst the most useful to you as a student. Speaking personally, I always found case reading far from unattractive, and it certainly must be much more easy to retain a recollection of matters actually decided in accordance with legal principles by the judges, at different periods in the courts, than to remember details of practice in which no shadow of a theory good or bad is involved. I imagine that, after once reading the "Six Carpenters'," or "Thellusson's" cases, for instance, the principles upon which they were decided will remain ineffaceably fixed in your mind.

LIST OF SOME OF THE MOST USEFUL LEADING CASES TO BE
READ DURING THE FIFTH YEAR.

<i>Name of Case.</i>	<i>Subject.</i>	<i>Collection.</i>
1. Spencer's Case	Covenants running with the land	Smith's Leading Cases.
2. Calye's Case	Innkeeper's liability	"
3. Fell v. Knight	" "	"
4. The Six Carpenters' Case	Trespassers <i>ab initio</i>	"
5. Montague v. Benedict	Husband's liability for wife's debts	"
6. Benedict v. Seaton	" "	"
7. Combe v. Great Western Railway	Carriers and Bailment	"
8. Coggs v. Bernard	" "	"
9. Elwes v. Maw	Fixtures	"
10. Amory v. Delamire	Trover	"
11. Dumpor's Case	Forfeiture of leases	"

<i>Name of Case.</i>	<i>Subject.</i>	<i>Collection.</i>
12. <i>Mostyn v. Fabrigas</i>	Torts	Smith's Leading Cases.
13. <i>Twyne's Case</i>	Bonds for defeating creditors	"
14. <i>Seymayne's Case</i>	Distresses	"
15. <i>Omichund v. Barker</i>	Oaths (evidence)	"
16. <i>Kincaird's Trust</i>	Wife's equity to settlement	White and Tudor's Leading Cases.
17. <i>Thellusson's Will</i>	Accumulations	"
18. <i>Thynne v. Earl of Glengall</i>	Doctrine of satisfaction	"
19. <i>Bowle's Case</i>	Waste	"
20. <i>Taltarum's Case</i>	Entails	"
21. <i>Leventhorpe v. Ashbie</i>	"	"
22. <i>Shelley's Case</i>	Limitations in deeds	"
23. <i>Edwards v. Slater</i>	Powers	"
24. <i>Fletcher v. Ashburner</i>	The doctrine of conversion	"
25. <i>Ellison v. Ellison</i>	Voluntary contracts	"
26. <i>Cadell v. Palmer</i>	Perpetuities	"
27. <i>Tollett v. Tollett</i>	Execution of powers	"

I will conclude this chapter with a final list of the statutes proper (in my judgment) to be perused by you at this stage of your reading. You will observe that the majority are acts regulating the procedure of the Chancery Division—your latest subject of study. Although the statutes of which I have from time to time given you the names and titles are amongst the most important and most

frequently cited in the Statute-book, still you will of course understand that there are many more of very frequent operation left unnoticed. I have, however, thought that the probable effect of giving you too formidable a list at the end of each chapter would be to make you diffident during the earlier portion of your novitiate of commencing the study of the statute-law at all; and I have therefore chosen rather to incur the odium of having omitted many acts of paramount importance, than to run the risk of neglecting all mention of the study of this most essential branch of the law until a time so close upon your final examination as to make anything like satisfactory and solid progress impossible of attainment.

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| 1 & 2 Will. IV. c. 58. | "Interpleader Act." |
| 3 & 4 Will. IV. c. 27. | "Statute of Limitations." |
| 4 & 5 Will. IV. c. 22. | "Apportionment Act." |
| 8 Vict. c. 18. | "Lands Clauses Act." |
| 14 & 15 Vict. c. 25. | "Emblements Act." |
| 15 & 16 Vict. c. 86. | "Chancery Jurisdiction Act." |
| 15 & 16 Vict. c. 87. | "Chancery Evidence Act, 1852." |
| 17 & 18 Vict. c. 36. | "Registration of Bills of Sale Act." |
| 20 & 21 Vict. c. 77. | "Probate Act, 1857." |
| 21 & 22 Vict. c. 27. | "Equity Damages and Compensation Act." |
| 23 & 24 Vict. c. 145. | "Trustees and Mortgagees' Act." |
| 25 & 26 Vict. c. 42. | "Chancery Procedure Act, 1862." |
| 25 & 26 Vict. c. 89. | "Companies Act, 1862." |
| 26 & 27 Vict. c. 41. | "Innkeepers' Liability Act." |
| 28 & 29 Vict. c. 86. | "Partnership Amendment Act." |
| 30 & 31 Vict. c. 131. | "Companies Act, 1867." |
- And, lastly, the Judicature Acts.

Again, there are also many statutes,—indeed almost all those mentioned in Bedford's List not hitherto enumerated,—that might with advantage be read.

CHAPTER VI.

THE FINAL EXAMINATION.

Practical suggestions on reading for the Examination—The Examiners' standard—"Coaches;" their advantages and disadvantages—Reading for honours—Routine of the Examination—Admission—Concluding remarks.

THAT distinguished lawyer, the late Mr. Jarman, used to tell a professional anecdote which, striking me as somewhat pertinent to the subject-matter of the present chapter, I venture here to repeat, although it may possibly be already known to you. Two young solicitors meeting by chance, the one asked the other to recommend him something interesting to read—some *novel* or other. "Take *Chitty*," replied solicitor number two, "there isn't a book in print that could prove *more novel*—to *you*." Now this remark could not well be made with any degree of truth to the youngest and most careless practitioner in the present day. Thanks to the system of examinations which now obtains, it is, as you well know, morally impossible for any man to enter the ranks of the profession without at least some rudimentary knowledge of the science he is about to practise; whilst in relation specially to the book named by the sarcastic solicitor, the more recently introduced Intermediate test has effectually disposed of any such reproach. At the time when Mr. Jarman wrote, however, the examinations were not yet instituted, and any person who could obtain the necessary affidavit of service might become a solicitor by merely paying certain fees. An old practitioner

once told me the way *he* was examined. His articles expired one day in term-time whilst he was at the agent's; what notice was then necessary had been duly given, and he was further provided with a sort of certificate, or letter of recommendation, signed by two professional men. A day or so before the conclusion of term he received an appointment to attend the following morning at the private residence of one of the judges, who at that time were *supposed* to personally test the fitness of candidates for admission. He accordingly went at the time appointed, and was shown into an anteroom communicating by a half-open door with an inner apartment, in which his lordship was at that moment engaged at breakfast. A servant carried in his card and the recommendatory letter to the judge, who called out from the inner room, "Well, Mr. —, and so you want to be an attorney? I suppose what these gentlemen say is correct, eh?" "Yes, sir," replied the nervous applicant for admission. "Hm," said his lordship, "it seems all right" (he hadn't even seen him); "you had better go to my clerk, who will tell you when you can be sworn, and what fees you have to pay. Good-morning." This was *the examination*; rather of a different character, you will admit, to the elaborate inquisition that candidates have now to undergo in the hall of the Law Institution.

About three months before the time appointed for the examination I would strongly counsel you to repair to some quiet place just out of London, where you may read at your leisure. You should not begrudge yourself this temporary retirement, bearing in mind that in all probability this will be the last recess of anything like equal duration that you are likely ever to experience. The noise and turmoil of London, the office work, and the social diversions besetting one at every turn, eminently disqualify the metropolis for your present purpose. If your examination is to take place in Trinity or Michaelmas (that is,

during or immediately following the summer), and circumstances render it practicable, it would be as well to follow the plan so much in vogue with university reading-parties during the vacation—retire to some small fishing-village, like Thames Ditton, where you are not likely to be troubled with much company. The actual amount of reading to be gone through depends so much upon individual personal characteristics in every instance, that I cannot attempt to lay down any very definite rule on the subject; but, after much conversation with other men, I have come to the conclusion that during the three months immediately preceding the final examination an average daily “grind” of *seven hours* will fit the majority of cases. I need hardly say that these seven hours should not be continuous; *that* would render you “muddleheaded” in a week, and ruin everything. It would be far better to divide the day’s reading into two or three parts, employing the intervals between each with some quiet *unintellectual* recreation—such as fishing; *not* cricket, or rowing, or billiards, which take far too much “out of” you physically; nor yet chess, or whist, practical botany or geology, or scientific reading—all of which tax the mind too heavily for you, who are at present tolerably well occupied with mental work. Speaking as an old student, I fancy nothing invigorates one so much after two or three hours’ reading *fort et dur* (which your reading now ought to be) as a little mild angling; an occupation at once pleasant and not exciting over much. But as to this, perhaps, *chacun à son goût*; only, whatever you do, refrain from reading novels or newspapers, or in fact anything except law during this period. Seven hours conscientiously devoted to books ought to take away all inclination to further indulgence in type; besides, the study(?) of “light literature” will make Chitty and Ayckbourn very distasteful when you come back again to them, as you *must* do.

Divide, then, your period of study by stated intervals of rest, so as to have a couple of hours' work immediately after breakfast, three more before your five or six o'clock dinner, and again two hours later in the evening. Each of these "stages" should be devoted to a different branch of learning. The first two hours might be appropriately given to some new or only half-mastered book; the *whole* of Chitty on *Contracts*, and Sugden on *Vendors and Purchasers*, for instance, might be advantageously disposed of in this way, your previous partial acquaintance with those authors doing much to clear the ground for you. Then out for a "constitutional," or an hour or two with rod and line. By the time you are returned you will be fit for the main business of the day—three hours' *résumé* work. With Williams on *Real and Personal Property*, Chitty on *Contracts*, Ayckbourn's *Practice*, Josiah Smith's *Manual*, Watkin Williams on *Pleading*, and Smith's *Action at Law* before you, go regularly through your commonplace-book, examining yourself and testing your accurate recollection of matters already learned, referring back to the authorities whenever you are at all dubious or "shaky." If you have followed out the plan I originally suggested, and have kept separate commonplace-books for common law, equity, and conveyancing respectively, your labours will be much lightened, as you will then be enabled to go through each subject in its order. This work thoroughly pursued will bring you up to your prandial hour. After a short interval you should proceed to your final work for the day, and read ten or twelve pages of Hallilay's or Bedford's *Examination Digest*. A digest of this kind only answers one special purpose—that of preparing you for an *examination*: it should not, cannot, in the least obviate the necessity for your resorting to other sources for a *knowledge of law*. A fellow student once imparted to me in confidence, a short time before his examination, that for nearly four.

months he had read *nothing but Hallilay*, getting up the questions and answers (some two thousand in number) *by heart*. I am happy to say that this ingenious gentleman was plucked; and although he subsequently managed to scrape through, his unfortunate clients (I should apprehend) can have little reason to congratulate themselves on their legal adviser's admission to practice. But, read strictly as mere *adjuncts* to Williams, Chitty, Ayckbourn, and the rest, these digests of the examination questions are useful, if only as showing what kind of test it is that you are about to undergo. Speaking for myself, I am willing to acknowledge that I derived considerable benefit from a perusal of Mr. Hallilay's book; and without letting it interfere with more important and legitimate reading, I found that it, as it were, *focussed* the examination subjects. With this experience in its favour, it would be mere affectation in me to seek to dissuade you from such an effective supplement to your studies. Only do not persuade yourself that in "getting up" these questions and answers you are *reading law*, for such is not the case.

It is very much the fashion just now to assert that the standard at the final examinations is unreasonably high. One even meets occasionally with some old-world practitioners who indorse this popular delusion, and protest that "it is perfectly idle and ridiculous to expect young men of two or three and twenty to accomplish what the authorities at the Hall require at these examinations. These elderly gentlemen either exaggerate the ignorance of their own youth—or (and this is, perhaps, as probable) forget that the very stimulus of periodically-repeated preliminary and intermediate examinations—a stimulus which was wanting in the days of their novitiate—conduces to render the final test far less formidable than it would otherwise be. This wrong impression is probably likewise contributed to in some measure by the reports of those unlucky voyagers, who having been themselves wrecked off the coast, are by

no means unwilling to add to its imagined dangers. When A., who is about to tempt the fates at Trinity sittings, meets B., who has been plucked at the preceding Easter examination, he is too apt to credit the latter's assertions as to the extreme intricacy of the examination questions, and the malevolent cunning and hard-heartedness of the examiners. He will even (such is the "corruption" of "evil communications") begin to believe that those gentlemen have entered into a solemn compact to exclude as many men from the profession as possible; and that when they expected B., after five years' study, to have some inkling of the fundamental principles of law, they were demanding an unmerciful amount of knowledge at his hands, and using him altogether very hardly indeed. *Experto credite*: there is nothing in the final examinations to frighten a man of the most ordinary application and ability. I say, further, that when I look at the standard in other examinations—when I see how X. is expected to solve the problem of perpetual motion, square the circle, and find out the beauty of Mr. Tupper's *Proverbial Philosophy*, before he can be admitted to sort letters at the Post-office at a salary of forty pounds a year; and how Y. has no chance of being allowed to carry a pair of colours in a marching regiment unless he understands all about Shakespeare, taste, and the musical-glasses, and can turn the money-market article in *The Times* into Greek pentameters—I am astonished that the examination for attorneys is not far more stringent and searching than it is. With the exception of those found in the Equity paper (which I will admit are rather hard sometimes upon country-bred clerks), there are seldom more than three or four questions out of the seventy-five which turn upon anything beyond the simplest and most obvious points of law.* If after five

* The conveyancing has been harder lately (Editor's note).

years of even desultory reading (to say nothing of practice) you are really unable to remember the principal points in the modes of descent of real and personal property; or if, like one man whom I knew, you are unaware that a *distringas* is *not* a method of commencing a suit in the Court of Chancery;* I can only say that you have mistaken your vocation, which may be philosophy, or may be costermongering, but certainly is *not* law.

The truth is, that the examiners are quite as anxious to admit the candidates as the candidates are to be admitted. So far from going about like raging lions seeking unhappy articulated clerks whom they may devour, these gentlemen, I am convinced, are only too happy when they are able to "pass" a paper; nay more, I firmly believe that they constantly let in men who have not obtained the requisite number of marks, sooner than send back any very large proportion of applicants. How is it otherwise that so few men are "ploughed" when the examinations are unusually difficult? Let me give an example: the examination at Easter term, 1867, was one of the most stringent within the memory of articulated clerks: a large number of the questions, in the conveyancing division especially, were much more recondite than those usually asked. I am very far from saying, you will understand, that this examination-paper was at all more searching than it should have been; but it undeniably was much more difficult than any of its immediate predecessors or successors. And yet in the result only one-sixth of the candidates (by no means an unusual proportion) were rejected. This, I think, will sufficiently show that the examiners are disposed to temper justice with mercy; for it is not to be believed that five-

* This is a fact: the wretched candidate had been reading some old Chancery practice-book, and I suppose had a confused notion that the *distringas* to compel appearance was still a step in the proceedings of a suit, and was identical with the *distringas* upon stock!

sixths of the candidates presenting themselves on this occasion were so far above the average as to be able to obtain full marks for two-thirds of the forty-five questions asked. The theory at the final examinations is, that in order to insure a "pass" the candidate must obtain two-thirds of the full number of marks in the three principal divisions—Common Law, Equity, and Conveyancing. In each of these subjects, as you are aware, fifteen questions are set; and as ten is the *maximum* number of marks obtainable for each question, it follows that to satisfy the examiners the candidates must obtain a hundred marks in each division, or 300 in all. Now, I am violating no confidence when I state on authority, that *not three candidates out of five* obtain 300 marks in common law, equity, and conveyancing. The conclusion, therefore, is irresistible—that men are allowed to pass through with somewhat less than two-thirds of the full marks, if their papers generally display any sufficient reason for such indulgence.

I have made these few observations, not by any means for the purpose of making you underrate the examination, but merely to dissipate from your mind the notion that the examiners are unduly captious and difficult to please.

You will have noticed that, in speaking of your reading for the examination, I have assumed you to be studying throughout by yourself. Now, whilst nothing can be more improving and pleasant than to go through this last course of reading in company with one or more efficient fellow-students, still, such assistance is not always at hand; and it follows that, unless you are so exceptionally fortunate as to possess a hard-reading friend about to "go up" at the same time as yourself, you will be compelled either to resort to a professional "coach," or to be all-sufficient to yourself, and study alone. Upon the relative merits of these two methods of reading—the "solitary cram" and the "social grind," as they are termed by the irreverent—

opinions vary. Many persons are opposed to the expediency of coaching unless the *rara avis in terris*,—a thoroughly efficient tutor who only takes one or two pupils at a time (a veritable black swan),—can be met with. Now if a man is a really good coach he will necessarily be much sought after, and consequently the taking one or two pupils at a time when he has to get men ready for the Preliminary, Intermediate and Final Examinations in two and three months respectively is not to be thought of. Coaches are much abused men, and very often by their own pupils after they have passed, who, but for the coach, would never have occupied the position that they do; for out of every ten men who read with a tutor hardly nine would pass at the first attempt unless prepared in the way they are. There may be faults in the system, but these faults, remember, do not rest with the man to whom the pupil in many instances owes his profession, and even his actual subsistence. If men would only think how little fitted they are to face the examiners when first they join the class in the tutor's room, and how delighted they are when they have passed the dread ordeal and returned home to be taken, perchance, into their father's office, one would not hear so much of the bad system of cramming. How can it be avoided so long as the solicitor, having taken the fee for his articulated clerk, has too much business to attend to him during the four or five years that he is left under his charge, and in some instances cares but little what becomes of him? At the end of this time the youth, not blessed with too many brains and having scarcely looked at law, says to his father, "I can't pass the Final." "What am I to do?" says the father to the next solicitor he meets. "Oh! send him to so and so," says the solicitor; "he got my son through in three months, and after that I should think he can do anything." And so the pupil comes to the coach hardly knowing the books he has to read, and in some

instances positively having no law books at all; and in three months the coach is expected to teach what the pupil has failed or ought to have learnt in five years! Now is it possible, under these circumstances, that cramming can be avoided? The fault does not, as I have already said, rest with the coach. Compelled as coaches are to be well up in Common Law, Conveyancing, Equity, Bankruptcy, Criminal Law, and Probate and Divorce, to have every Act of Parliament and new decision noted up; and some of them the authors of many a useful book on all the above subjects, they cannot be such bad lawyers. Why not, therefore, let the pupil read longer with them? It is not often coaches have the chance of retaliating upon their deprecators, but I would only say that if they were used as they ought to be used, and articulated clerks put under their care for a longer period than they are, say, during the time that is usually wasted in the agents' office, there would be a great many better lawyers in the profession than there are at present.

Thirty questions on bankruptcy and criminal law and probate and divorce are added to the forty-five set on equity, common law and conveyancing in the examination-paper; and it is generally understood that every candidate for "honours" is expected to obtain a certain proportion of marks in each of these subjects. With regard to bankruptcy law, you will (for a term or two yet to come) have to read, with an attention that it intrinsically does not deserve, the whole of the Act of 1869, together with such portions of the earlier Acts (1849 and 1861) as remain unrepealed. You should further peruse Smith's useful little bankruptcy manual, which contains a good deal of information on the subject within a very small compass.* Robson's comprehensive treatise I hardly anticipate you will have time to wade through. Without anticipating

* And finish with Bedford's *Bankruptcy Guide* (Editor's note).

that the system in vogue in Prussia—which, dispensing with the assistance of a court of bankruptcy, makes the creditors the sole arbiters of the bankrupt's future—will ever be adopted in its integrity here, it is yet tolerably certain that the new measure, whatever its details may be, has proved greatly more to the advantage of creditors than the Act of 1861. Indeed, the operation of the statute for which Lord Westbury is responsible, has, in the opinion of many mercantile men, from the facilities it affords to dishonestly-disposed debtors, greatly intensified, if it did not originally conduce to, the commercial depression from which this country had then been recently suffering. But, however this may be, it is necessary for you, as a lawyer, to “bow to the powers that be,” and, as a student, to make yourself acquainted with the practice now governing this important branch of your profession.

I regret that I cannot name any short elementary work on criminal law suitable for reading for the Final Examination. Russell on *Crimes* is generally admitted to be the most complete treatise upon this subject, but it hardly fulfils the condition of a “small elementary work;” and although Mr. Davis has written a masterly epitome of the Consolidation Acts of 1861, still, an elementary treatise on criminal law for the use of students is, in my opinion, a *desideratum*. In the absence of any manual specially treating of the outlines of criminal law, I would refer you to the fourth book (*On Public Wrongs*) of Stephen's edition of *Blackstone's Commentaries*, which will supply you with everything that you can require to know as to the *principles* governing the English criminal law; whilst, with regard to practice, I must advise you to read very carefully Mr. Davis' edition of the *Criminal Law Consolidation Acts of 1861*, 24 & 25 Vict. cc. 94, 100.* The same year which

* Now that Mr. Anderson's *Student's Guide* is out of print, Mr. Harris's work on Criminal Law will be found of great use for purposes of self-examination (Editor's note).

gave birth to the ill-omened Bankruptcy Act witnessed a step in the right direction in the passing of these statutes, which goes far to supply, as to this special subject, one of the wants of the age—a digest or code of law. The Acts in question repealed the greater number of criminal statutes then in force; but since the year wherein they were passed, several alterations have been effected by the Criminal Evidence Act (28 & 29 Vict. c. 18), which in a great degree assimilated the law of evidence in criminal cases to that already established in the civil courts, and the Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), both of which important statutes you should also attentively read. As it now stands, the criminal law of this country may, both for the substantial justice it affords and the certainty of its application to individual cases, challenge competition with that of any existing nation; and as there is little probability of any great further changes being effected in this branch of jurisprudence for a year or two to come—the game-laws possibly excepted—the reading necessitated by your impending Final Examination will not (as is in some degree the case in “getting up” the at present subsisting bankruptcy law) be time wasted, but, on the contrary—and this whether you intend to practise criminal law or not—be most serviceable to you as a practitioner.

These remarks exhausting all that I think it necessary to say on the subject of reading for the Final Examination, I will now attempt to give you some idea as to the kind of ordeal that awaits you within the walls of the Law Institution.

On the first day of the examination, you will attend at the Carey Street entrance of the Law Institution a few minutes before ten o'clock, and after depositing your hat with the porter, pass into the room where the examination

is to take place; an attendant at the entrance giving you a ticket bearing the number of your seat, which you will have no difficulty in finding. The hall wherein the examinations take place is a large, well-proportioned apartment, somewhat recently erected. Between a hundred and a hundred and twenty small narrow tables and forms are placed at regular intervals, and each of these tables is for the accommodation of one man, the candidates being arranged, by means of numbers, in alphabetical order. At the top of the room is a dais, or raised platform, with chairs and desks for the examiners. The average number of candidates at the Final Examinations is a little over a hundred; but that number is sometimes exceeded. A few minutes after the clock in front of the gallery has pointed to the hour of ten the examiners mount the platform. There are six of these gentlemen—one for each subject; and the presiding examiner is ordinarily a master of one of the superior courts, the other five being practising solicitors and members of the Council. On these occasions the chairman invariably delivers a short inaugural address to the assembled students, in the course of which he generally draws their attention to the rules of the examination, particularly that one which relates to the penalty awaiting a candidate who copies from another man's paper. This harangue being concluded, an attendant proceeds to distribute the question-papers; and you will certainly be remarkably self-possessed if you can manage to await their advent with anything like complacency. At this moment a sort of retrospective vision of wasted hours and evenings devoted to anything rather than reading arise before your mind's eye, and you probably find yourself making all sorts of impossible resolutions (to be broken as soon as entered into) for your future guidance. By this time your paper has reached you, and after a hasty glance down the closely-printed sheet, you will forthwith set to

work. In order to guard against ready-written answers being brought into the hall, every sheet of paper used for the answers is ruled in two divisions in red ink, and numbered; and at the top of each sheet is a printed recommendation to the effect that each of the candidate's answers should be confined within the allotted space of half a page. As a general rule, I should advise you to accept this limit: nearly every question asked by the examiners can be completely replied to in eight or ten lines at most; and anything beyond that would therefore be superfluous. There are occasionally, however, instances where your answer, to be thorough, must necessarily exceed half a page; and in such a case I should counsel you to step up to the platform, and draw the examiner's attention to the fact, when he will probably direct you to "write down all you know about it." This necessity can only arise where the question is framed somewhat loosely, so as to demand more than one paragraph by way of answer. At my own examination there was such a question in the criminal division: "Give an account of the different criminal courts, their constitution and jurisdiction." Now to write anything like a satisfactory *résumé* in answer to this, it was necessary to enter somewhat fully into the constitution and jurisdiction of nine distinct tribunals, beginning with the House of Lords and ending with the police-magistrates' courts; and this of course occupied a good deal of space. If such a question happens to be asked you, I should advise that you answer it at length, notwithstanding the examiner's recommendation; writing at the end of your answer a note to the effect that the question put could not be fully disposed of within the prescribed limits. This course cannot prejudice you; but another more objectionable method of lengthening the answers is very likely to do so: I allude to superfluous and irrelevant matter, introduced in order to hide ignorance

of the special point asked. This is a very vicious practice, and one looked upon by the examiners with much disfavour. *Exempli gratia*:—Suppose you were asked, “What was the form of conveyance of freeholds of inheritance to prevent the attachment of the purchaser’s wife’s dower before 3 & 4 Will. IV. c. 105? Is it now ever necessary, and in what cases?” The direct answer to this would of course be, that “the old form of conveyance in bar of dower was to give the purchaser, in the first place, a general power of appointment by deed during his life, and in default of such appointment to the purchaser for life, with remainder to a trustee and his heirs for the life of the purchaser, with an ultimate remainder to the heirs of the purchaser; by which means, as the purchaser had no *estate of inheritance during his life*, his widow was barred of her dower; but this form is now only necessary in the case of women married before 1st January, 1834, as, with regard to women married since that date, dower can be barred by a simple declaration inserted in the deed.” Now, supposing you knew the principles governing the whole law of dower, but were unaware of the form which the limitations took, it would be better to write simply that “the law of dower was altered in the year 1833; and as to women married since that date a mere declaration in the conveyance will bar dower,” than to inform the examiners (as some men under the circumstances would do) in addition, that “dower anciently attached to all the lands of which the husband was solely seised, was paramount to the husband’s alienation, and independent of his debts, and could only be released by means of a fine *sur cognizance*,” &c. Now, the examiners did not ask *what* the old law of dower was; they simply inquired as to the present and ancient methods of barring that right; and whereas an *incomplete* answer to the question, such as the former of the two I have supposed you to make, would probably

gain half-marks, the almost certain consequence of your thus "showing off" your knowledge of that which *you were not asked about*, would be that you would get no marks at all. I have mentioned this bad habit thus at length, because I know that it is continually practised, and as constantly tells unfavourably in the examinations. It is very easy to avoid falling into a mistake of this kind: only bear in mind that you are required to give a direct answer to a direct question, and to insert nothing in your answer that you are not questioned upon, and you will spare the examiners a considerable expenditure of time, and yourself a possible "pluck."

I need hardly caution you against using "cribs," copying from another man's paper, or allowing anyone to copy from yours. I say nothing here as to the *morality* of the matter, but would only draw your attention to the fact that detection is imminent—almost inevitable—in such cases. It frequently occurs in the course of the examination that a man is found out in some unfair act of this description. There is no scene; the other candidates are not interrupted: only an attendant quietly steps up to the culprit and desires him, in the name of the secretary, to withdraw immediately; and he has no option but to comply,—and be "plucked." The seats are so arranged as to allow of every movement of the candidates being watched by the lynx-eyed porters and attendants, who never fail to report to the secretary any infraction of the rules which they have observed almost as soon as it is committed. I have heard indeed of men who are in the habit of bringing "time-tables" and other ingenious "cribs" into the room in their pockets; reading the questions through, and then, feigning temporary indisposition, retiring to some secret place to refresh their memories by a hasty perusal of their hidden treasure. You may depend upon it that such a *ruse* as this can scarcely ever be successful; the

examiners will be almost certain to detect the source of the candidate's inspiration from the very wording of his answer, which will, unless very cunningly manipulated, "smell of the lamp," as the actors say. But I will not insult you by assuming that you have any intention of resorting to such devices as these, and therefore will say nothing further on this subject.

Candidates are sometimes directed by the examiners to "give the authority" for their answer. Now if the "authority" referred to is a statute generally known to the profession, you ought to be in no perplexity as to quoting its title; for although at first it may seem very difficult to remember the distinctive numbers or *capita* of so many acts, yet this mechanical feat is in reality simple enough after a time. But if the authority referred to happens to be a *case*, and you are not certain whether you know what particular case is referred to, it would be better to leave that part of the question unanswered than to risk a mistake which may prejudice you in the eyes of the examiner. Imagine, for instance, a candidate being asked for a leading case on the subject, say, of separate estate, and citing *Garth v. Cotton*, or *Omichund v. Barker*! The worst that the examiner can think of you, if you refrain from citing any authority, is that you are ignorant of that particular case; but by quoting an *inapplicable* case, you show yourself doubly at fault. Of course, however, you will not fail to give your authority if you are quite certain upon the point; nothing "tells" so well with the examiners as a fair acquaintance with case-law.

It may chance that, after attentively reading through some particular question two or three times, you fail to understand the examiner's meaning. Now, although three times out of four any doubts on this head are caused by the candidate's ignorance of the subject-matter of the question, still, it does sometimes, although rarely, occur that a ques-

tion is framed so unskilfully, or is conveyed in such involved language, as to render its apprehension really a matter of difficulty. In such a case you should resort to the secretary, who sits near the examiner's desk for the express purpose of solving doubts of this kind. If, as sometimes happens, there really appears to be any mistake in the form or matter of the question, he will at once confer with the examiner who set it, who will announce to all the candidates that there is an error in the language of such-and-such a question, at the same time intimating how it ought to be read. If, however, the difficulty arises, as it generally does, merely from the applicant's ignorance of the point upon which the question turns, he is not likely to gain much at the secretary's hands.

The time allowed for answering the paper on each day is from ten to one and from two to five o'clock—that is, six hours. On the first day, when only thirty questions altogether are set, this time is ample for the purpose; and you will be able to read through your answers *seriatim* before giving them up, and to rewrite any one or more sheets which may be carelessly or illegibly written, or much blotted and interlined. The second day, however, forty-five questions are set; and if you intend essaying every one of these, and are slow with your pen, there will not be a great deal of time to spare. I should therefore advise you to complete all your answers before rewriting any of them. If, after finishing the entire paper, you find that there is still time to re-copy any unpresentable sheets amongst your manuscript, you may proceed to do so.

In writing out the second day's paper, you should make quite sure of your answers in the conveyancing division before turning to the questions upon criminal law, bankruptcy, and probate and divorce. Your great object is to pass; a high place in the honours list is a mere secondary consideration. Now the examiners will never reject you if

your answers in the three principal divisions are satisfactory; and it would be far better to risk the being unable to finish the second day's paper, than to hurry over the earlier portion—that, namely, devoted to equity—and perhaps commit serious mistakes in that subject. When you can find nothing to add to your equity answers, it is time enough to turn to the supplemental portion of the examination paper.

You should not fail to obey the printed directions, and sign your name legibly at the foot of every sheet of answers. You had better delay tying together and delivering up your papers until you are quite certain that you have done all that you *can* do with them. Having once given them up to the secretary, you will not be allowed to reclaim them.

I do not know that I have anything further to add to the advice contained in a previous chapter* as to the manner of answering the examiner's questions. If you possess—as you ought to do—the requisite amount of legal knowledge, nothing but physical nervousness, or an extremely *malapropos* set of questions, can cause your rejection; whilst, on the other hand, if you are so ignorant as to be unable to satisfy the examiners as to your fitness to practise the profession you have yourself chosen, you will only have your own indolence or incapacity to blame for the unfortunate result.

The examination over, you will have to wait, with what patience you may, for five or six days before hearing the result. At the end of that period you will receive either a notice that you have passed, and that the examiner's certificate awaits you at the Institution, or a lithographed letter, politely informing you that the examiners have thought fit to "postpone," for the present, your admission

* Chapter III. (the Intermediate Examination).

to practice. Immediately on hearing of the successful issue of your examination, you should provide yourself with the necessary funds (about 33*l*.) for the various stamps and fees, and then proceed to take the necessary steps for your admission, which the common law clerk at your agent's office will no doubt do for you.

My task is now ended. It does not come within my province to accompany you further than the threshold of your professional life; nor can I boast any claims, derived either from experience or success, whereby I might presume to constitute myself your Mentor in the long years of honourable industry which now lie before you. In that which I have written, I am conscious that there are many errors, both of omission and commission; but I can at least ask you to believe that my intentions have been sincere, however much my unaccustomed feet may have chanced to falter on the way. Above all, I would here repeat what I took occasion to say on our first introduction to each other—that these humble pages are in nowise meant to supersede the labours of wiser and abler men; that my “*Practical Handybook*” is merely an attempt to guide, in some slight degree, your first steps upon the path which leads by imperceptible stages towards a knowledge of the law. Whether that attempt has, or has not, deserved a meed of success is not for me to decide. In taking leave of you, newly-admitted to the exercise of your vocation, I would, however, venture to urge, as a fellow-learner, the necessity for continued assiduity now that your probationary period of study has become a thing of the past. In a science which has for ages occupied the highest intellects of the nation—in a profession rendered for ever illustrious by the splendid talents of a Coke, a

Bacon, a Blackstone, a St. Leonards, a Butler, a Romilly, and a Brougham—the time never comes when the labourer can rest his hand upon the plough-share, saying, “My work is accomplished to the uttermost, and I may rest.” Upon us—each according to his means—as the friends and sustainers of order and civilization, rests the burden of the day; and from the Lord Chancellor on his judgment-seat down to the humblest solicitor of us all, there is work lying to our hands which we can fulfil only by unceasing industry in the pursuit of knowledge. Even in our own lower walk of the profession, there have been many men whose labours have notably conduced to the advantage of the community; and although it is given to few to possess the high abilities which have made the names of Turner and of Roscoe in modern times redound to the honour of our common calling, still, the least among us can by his conduct contribute something towards the ever-growing repute of the honourable profession whereof we are members. But I must recollect that, the task which was originally my excuse for addressing you being accomplished, my longer lingering may be deemed intrusive. Here, then, I stay; and that I may worthily take my leave in words deserving and rewarding remembrance, I would repeat, in the words of one of the greatest of English writers, Sir James Mackintosh, “There is not, in the whole compass of human affairs, so noble a spectacle as that which is displayed in the progress of jurisprudence; wherein we may contemplate the cautious and unwearied exertions of a succession of wise men through a long course of ages, withdrawing every case, as it arises, from the dangerous power of discretion, and subjecting it to inflexible rules; extending the dominion of justice and reason, and gradually contracting, within the narrowest possible limits, the domain of brute force and arbitrary will.”

APPENDIX.

LIST OF STANDARD BOOKS ON SPECIAL SUBJECTS, SUITABLE
FOR READING FOR HONOURS.

1. *Criminal Law and Magisterial Proceedings.*

- *Russell on Crimes and Misdemeanors.
- *Davis' Criminal Consolidation Statutes.
- *Roscoe's Criminal Evidence.
- Shelford on Highways.
- Oke's Game and Fishery Laws.

2. *Ecclesiastical Law, &c.*

- Prideaux on Churchwardens.
- *Burn's Ecclesiastical Law.
- Shelford on Tithes.
- Halifax's Elements of the Roman Civil Law.

3. *International Law.*

- Kent's Commentaries on the Law of America, vol. i.
- Leone Levi's International Commercial Law.
- Marten's Compendium of the Law of Nations.

4. *Bankruptcy.*

- Smith's Manual of Bankruptcy.
- *Robson's Practice of Bankruptcy.

5. *Constitutional Law.*

- Reeves' History of English Law.
- Hallam's Constitutional History of England.
- De Lolme on the English Constitution.
- Hallam's Middle Ages, chap. viii.

6. *Probate and Divorce.*

- *Coote's Probate Practice.
- *Pritchard on Divorce.

* Questions are more generally asked from the text of the volumes marked with an asterisk.

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